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POLITICAL SCIENCE QUARTERLY.

HENRY C. CAREY AND HIS SOCIAL SYSTEM.

I. *The Development of the Man.*

THE economic education of Henry C. Carey began early in his life. The son of a poor Irish immigrant, he was from his ninth year onward associated with his father in business, and was widely known to the trade as "the little bookseller." If the practice of a successful domestic economy be any preparation for a correct appreciation of political economy, the Careys gave promise of becoming economists of no mean order. Their firm was deemed the most enterprising publishing house in the country, and their success was proportional to their efforts. All the books which were selected for publication, or for re-publication, passed through the younger Carey's hands, and the most of them were read by him. This was his education. His reading must have included a wide range of subjects, and the necessarily superficial character of much of it is doubtless responsible for some of his later faults. But his attentive spirit and retentive memory finally made him, on the whole, a better equipped man than the majority of his college-bred contemporaries. The father's numerous writings upon economic and political subjects must also have passed through the hands of the son, and helped to confirm the natural bent of the latter's mind. The young man acquired some familiarity with the productions of leading English economists, and regarded himself as their obedient disciple. His father's theories were antagonistic to the prevalent economic gospel, but neither paternal precept nor the political turmoil of the Nullification controversy disturbed the son's allegiance.

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Mr. Elder's assertion[1] that prior to 1835 Henry C. Carey had made no especial study of economic science, may be supposed to mean that Carey had up to that time done no original work. That year, however, was signalized in the Carey calendar by two notable events. He retired from business with a fortune, and appeared before the reading public with an essay on the rate of wages. The impelling cause of the book was a volume of lectures, delivered by N. W. Senior in 1829–30, on *The Rate of Wages* and *The Cost of Obtaining Money*. These lectures gave Carey the text for a well-studied effort, written in his usual sprightly style, but otherwise displaying few of the familiar Carey earmarks. He agreed with the main part of Senior's propositions, and sought to expand his reasoning rather than to alter it, — to criticise details rather than principles, — except in one instance. Senior based his calculation of the cost of obtaining money upon the money price of labor in various countries, regarding that as the measure of their powers of production. Carey made the obvious comment that a careful distinction should be preserved between money wages and real wages, and he computed elaborately the variations in the latter. To Senior's fundamental doctrine of the wage-fund, Carey accorded his "unqualified assent."[2]

There is no lack of evidence that he considered himself a member in good and regular standing of the orthodox economic church. At forty-two years of age, and in full view of the workings of the compromise tariff of 1833, he wrote:

> *Laissez nous faire* is the true doctrine. . . . All the important principles of government are settled in this country, and have ceased to be matters of discussion; and, notwithstanding the departure therefrom in the case of the tariff, it is now so fully understood that the true policy of the United States is freedom of trade and action, that there will be every day less disposition to interfere with it.[3]

[1] Wm. Elder's Memoir of Henry C. Carey (published by the American Iron and Steel Association, Philadelphia, 1880). See also R. E. Thompson's articles in Stoddart's American Supplement to the Encyclopedia Britannica.

[2] Carey, The Rate of Wages, p. 29.

[3] *Ibid.* p. 134.

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After this, it is the more interesting to find, by a closer scrutiny, that the essay contains already the seeds of Carey's later system. While believing himself safe in the shelter of orthodoxy, he had in reality strayed far from the fold. McCulloch, Say and the economic oracles generally proclaimed that the interests of capitalist and laborer were conflicting, that high wages and high profits were incompatible. Senior had referred to this theory as one held by "dabblers in political economy." Carey fortified Senior's assertions with an attempt to demonstrate that capital increases faster than population, and that high wages are a concomitant evidence of prosperity and of the rapid augmentation of capital. Then he sang the first of his many hymns of praise to those natural laws by which a beneficent Deity secures universal harmony. He denied the truth of Ricardo's theory of rent, on the ground that the swift increase of capital must compensate the poorer soils for their natural inferiority. He treated Malthus with scant favor, arguing that food increases faster than population, and that the distress of the poor is caused by restrictions upon trade and by unequal taxation. It becomes apparent that, even in 1835, the supremacy of *laissez faire* as a principle of politics and economics was the only war-cry of the orthodox host which Carey uttered with any zeal. On this point, too, there were strong indications of heresy. The concluding chapter is the most significant of all. There, wealth is identified with happiness, and the object of political economy is defined as the promotion of the happiness of nations and the application of *national* labor, "so that the laborer can command the greatest amount of comfort with the smallest sacrifice."[1] Most suggestive of Carey's future career is the intensely patriotic, national feeling that pervades this first work. It is characteristic, too, of the man that he should transform a view of the subject of wages into a prospect over the whole range of economic thought. The skin may have been the skin of Say, but the voice was the voice of Carey.

Carey's maiden effort was so far satisfactory to himself that

[1] *Cf.* the statement, on p. 161, that "property is the creature of government."

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he felt encouraged to produce a work with the aspiring title: *The Harmony of Nature.* Let it be remembered to his honor that he recognized and confessed failure in this attempt, and refused to publish the book. Not every author, wealthy enough to gratify his ambition, would manifest equal judgment and self-control. But the fascination of his subject was powerful upon him. In the language of his biographer, Mr. Elder: "He set aside the creeping, toddling effort at cobbling the received authorities," and, between 1837 and 1840, expanded his essay on the rate of wages into three volumes of *The Principles of Political Economy.* The reviewers of the day expressed their alarm at the appearance of a first volume of three hundred and forty closely printed pages, and doubted whereunto this would grow.[1] Some justification of their fears may be seen in the fact that Carey claimed to discern no less than thirty-seven natural laws, ruling majestically the economic world. The work is valuable chiefly as a gauge of mental evolution, but an exception may be made in favor of the second volume. That was devoted to a study of the credit system in France, Great Britain and the United States. It spoke a timely word for American banking in the hour of its distress. The country was suffering under an epidemic of financial diseases. The West was burdened with wild-cat banks and ill-regulated state-banks, and the embarrassment was destined to increase. A party of frantic statesmen, with "Old Bullion" Benton at its head, clamored for "metal money" and regarded banks as devices of the devil to aid New-Englanders. The United States Bank had been killed. A Democratic administration had declared war to the knife against the Eastern banks, so largely controlled by its political opponents. The old Bank of the United States, now the United States Bank of Pennsylvania, tottered to its fall, and suspended payments for the first time in 1837. Hard times had begun. No little confidence and courage were needed in order to defend in a moderate tone, as Carey did, the institution of the United States Bank and a regulated bank-note currency. At that moment, in England, a dispute concerning the true principles of banking waxed

[1] See the *New York Review* for July, 1838.

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warm under the stimulus of general commercial distress. The party of Tooke and Mill, which supported free banking, assailed the dominant school of the currency principle, led by McCulloch and Lord Overstone. The party of the currency principle triumphed in the English Bank Restriction Act of 1844, but the progress of events has justified the advocates of free banking. With the latter company Carey identified himself, basing his plea on an excellent study of the financial crash of 1836–37 and on an investigation of the banking laws and customs of New England. The methods in vogue in Rhode Island especially won his admiration. His recommendations were: the abolition of special-charter legislation; the substitution therefor of practically free banking under the provisions of a general incorporation act; and the recognition of a limited liability of stockholders. His opinions upon the last topic secured for him the notice and regard of John Stuart Mill, an advocate of the same principle. Carey's conclusions respecting the currency were vague and defective, and seem to reveal the influence of Nicholas Biddle's undisciplined theories concerning the uses and limits of a paper circulation. Mr. Carey was still so faithful to the standards of *laissez faire* as to say: "Governments have arrogated to themselves the task of regulating the currency, and the natural effect is that nothing is less regular"; but this was his last enunciation of that creed.

During the interval that elapsed between the issue of *The Principles of Political Economy* (1838–40) and his next publication in 1845, his views concerning the beneficence of governmental interference underwent a profound modification. The seeds of heresy which we have already discovered in his earlier works, ripened rapidly, aided in their development by Mr. Carey's interpretation of the signs of his times. The wide-spread mercantile ruin of 1836–37 affected him both as a thinker and as a man of business. On both sides of the water the pillars of commerce were toppling. In New York city one hundred millions of dollars were lost in two months. Eight of the states became insolvent, wholly or in part. The national government, which had been dividing its surplus revenues among the states, now

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found itself penniless and unable to negotiate a loan, either at home or abroad. At the same time, the compromise tariff of 1833 was bringing the country nearer and nearer to freedom of trade. To Mr. Carey's mind an increase of mercantile failure and distrust seemed to be the inseparable accompaniment of diminished duties. Carey's personal share in the universal calamity may have afforded a powerful incentive to a change of heart. Individual losses may leave a deeper impression upon the mind than the difficulties of a secretary of the Treasury. Between 1837 and 1840 Mr. Carey invested a portion of his wealth in a paper mill. It was his first practical experience with American manufacturing. The tariff grew less and less protective. The manufacture became unremunerative and the investment was lost. But if the property was lost, the moral was not. With the Whig victory of 1840, the current set once more towards a protective system. Mr. Carey expected that the tariff of 1842 would enhance and prolong the country's misery, and he was surprised to find it attended by a partial revival of confidence and prosperity. By the close of 1842 he was debating with John C. Calhoun, whether there might be some hitherto unknown reason for the apparent mutual attraction between protection and prosperity on the one hand, and between free trade and insolvency on the other. Mr. Elder professes to quote his friend's own words in saying that, about 1844, there came to Carey, "as with a flash of lightning, the conviction that the whole Ricardo-Malthusian system is an error, and that with it must fall the system of British free trade." We have already seen sufficient reasons for believing that Carey's conversion was not quite so much like that of Saul of Tarsus as Mr. Elder thinks.

It must be remembered that Mr. Carey was always an omnivorous reader, and that his acquaintance with economic literature of all schools was not small. The abundant quotations in his *Social Science* may fairly be supposed to betray the immediate springs of his new belief. It may be inferred that he turned most frequently to history, to the history of the English occupations of Ireland and India and to the story of the German

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Zollverein. Reference to the *Zollverein* suggests the name of Friedrich List. Of List's *National System of Political Economy,* which first appeared in 1841, Carey made liberal use.[1] He was doubtless familiar also with List's *Outlines of Political Economy,* which had been published in Philadelphia fourteen years earlier. Mr. Carey also acquired a knowledge, praiseworthy in an American of that day, of the ideas of German and French economists, notably of Rau and Chevalier.

No sooner had he adopted his new faith than, with the zeal of a proselyte, he began to ply his pen in its behalf. The harbinger of what was to come was a pamphlet, issued in 1845, upon *Commercial Associations in France and England.* Three years later, he formally threw down the gauntlet in his *Past, Present and Future,* written, printed, and placed upon the market within ninety days. The amazing confidence and enthusiasm of the author are well exemplified in the opening sentence:

> The volume now offered to the public is designed to demonstrate the existence of a simple and beautiful law of nature, governing man in all his efforts for the maintenance and improvement of his condition — a law so powerful and universal that escape from it is impossible, but which, nevertheless, has hitherto remained unnoticed.

Then follows the unfolding of his theories as to the occupation of the land and the necessity of maintaining domestic markets. Here first is found that dramatic metaphorical marriage of the loom and spindle to the plow and harrow; a vision which afforded Carey unfeigned and oft-recurring pleasure. The work was received, as were its numerous successors, with both extravagant praise and cold contempt. On the one hand, Mr. Elder's falsetto tones exclaim: "That book marks an era in the history of Political Economy, from which it may count its A. U. C., its Hegira, its Declaration of Independence." On the other hand, the college professors arose from the perusal of Wayland's *Political Economy* and jeered at the unbeliever.

[1] See Carey's Social Science, vol. ii, p. 125. See also Friedrich List's Outlines of American Political Economy, a series of letters addressed to Charles J. Ingersoll (Philadelphia, 1827). *Cf.* Stephen Colwell's Essay, prefixed to the English translation of List's National System, pp. xlviii, lxv–vi.

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Were Ricardo, Malthus, McCulloch and Mill blind leaders of the blind? If they were, was it out of New Jersey that a prophet should arise with the sovereign balsam for feeble eyesight?[1] And with one accord, they all cried the louder: "Great is *laissez faire* of the Ricardians."

Mr. Carey had indeed flown in the face of Providence and of the Manchester school. This economic Sanhedrin reigned supreme on both sides of the ocean. It was without a rival in the universities. A line of English statesmen, from the younger Pitt down to Sir Robert Peel, had been either publicly or in secret its votaries. Richard Cobden's clear logic and John Bright's sympathetic eloquence were combined to spread among the people the new gospel of commerce. The repeal of the corn laws, in 1846, heralded the subsequent proclamation of international freedom of trade. The Manchester school was in possession of the field and was already beginning to count its trophies. The gentle strokes made upon its armor by Dickens' cockney wit availed only to suggest what might have been done by the stinging, scathing sarcasms of a Swift. Only from one corner of the world uprose a bitter cry against the policy of prosperous England. That corner, of course, was famine-stricken Ireland. In America, at least among economists, the sway of the school of the prophets was absolute. The United States as a whole, controlled by a landed aristocracy far worse than that of England, possessed only a crude system of exchanges. The commercial life of the Atlantic seaboard drew its nourishment from London. Clay's "American system" had recoiled for the second time before the unpatriotic spirit of South Carolina. Once more the uncertain helm of our ship of state turned to follow in England's wake towards the haven of free trade. Such was the moment that Carey had chosen for the avowal of the protectionist faith that was in him.

Henceforward, for a quarter of a century, his literary activity was untiring. Books, journals, magazines, pamphlets — all were the channels of his frequent inspirations.[2] In 1849 he became

[1] Mr. Carey lived then in Burlington, N.J.

[2] In 1852 alone, he published eight pamphlets, aggregating nearly 200 pages.

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a regular contributor to the *New York Tribune*, and Mr. Elder says that until 1857 he was virtually the economic editor of that paper. In the latter year, Mr. Greeley's opinions changed front, and he supported the new tariff act, which reduced duties still further. "He said to Mr. Carey: 'The whole world has gone over to free trade.' 'If you will wait a little,' replied Carey, 'you will see it come back to protection.'"[1]

Certainly the *Tribune* came back, and apparently to stay. Carey's zeal must extort admiration, even though one denies it to be of the kind according to knowledge. It is not strange that his name became a rallying cry. In Europe, Dühring and Ferrara called him "Master." Bastiat seems to have paid him the doubtful honor of plagiarizing from him. His thought was transferred into eight European languages and into one Asiatic speech. Upon the course of economic discussion and political action in the United States, Carey exercised an influence more than commensurate with either his learning or his ability. Many men since Hamilton had spun the threads for an American protective system, but Carey wove the fabric. He attempted, at least, to substitute a scientific argument for fragmentary discussions. He met the *laissez-faire* doctrinaires with a creed as sweeping, as courageous and as unyielding as their own. His work became what it has remained till to-day, the repository of testimony for the protectionist, the Bible of his faith. W. D. Kelley, Stephen Colwell, E. Peshine Smith and others formed with him what has been generally called the only American school of political economists. By these men and their successors, aided by the exigencies of doubtful partisan strife and of civil war, his doctrines were popularized and propagated. Not solely along the banks of the Delaware there may yet be found those who, with the extravagance pardonable in disciples, speak of Henry C. Carey as a great philosopher, and of his economic and social system as a crowning achievement of human wisdom.

[1] Prof. R. E. Thompson.

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II. *Summary of Carey's Social Philosophy.*

A review of Carey's philosophy needs not to stray outside of the three volumes of *The Principles of Social Science* which appeared in 1858–59. Here is the solid substance of his thought, condensed from the nebulous mass of lighter books, essays and newspaper polemics. Its chief constituent element is the study of the proper economic development of the citizen. The production and uses of wealth are related but subordinated topics. After Mr. Carey had deserted the guides of his youth, he ever regarded political economy as only a chapter in the volume of social science.

His starting point is the argument for the evidence of design in nature. The inherent characteristics of terrestrial existence must be happiness and peace, since an all-wise, all-merciful Power could not intend a discordant universe. The laws of nature are universal. That harmony which pulses in the ceaseless motion of the worlds must also distinguish the normal development of humanity. Man's suffering is, therefore, the result of his own wilful and criminal ignorance and deficiency. The functions of social science, and with it of political economy, are to reveal the harmonies contravened through ignorance or deficiency, and to determine the natural course of man's development. The real man must be kept in view, a being endowed with affections and intellect, not the politico-economical man, a monster, who, as Carey tersely said, "can be made to work, must be fed, and will procreate."

Social science is defined as "the science of the laws which govern man in his efforts to secure for himself the highest individuality and the greatest power of association with his fellow men." Political economy treats of the measures requisite in order to give these laws their fullest effect. Wealth is "man's power to command the always gratuitous services of nature." All values arise from labor. The distinction between value and utility is made sharply and in Carey's peculiar manner. Value is the measure of nature's power over man, and is limited by the cost of reproduction; hence value declines with the

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increase of combination among men. Utility is the measure of man's power over nature, and grows with the extension of human association. Consequently there is a relative increase of utilities and decrease of values.

Mr. Carey was too tender-hearted to define capital as the reward of saving; that last term savored of adversity. Capital is, in general, "anything that aids in production"; it is derived from "the economy of human effort engaged in suppressing some portion of human labor and annual expense." The limits upon its accumulation are slight; it tends, therefore, to augment faster than either food or population. Rent is the interest on capital invested in land. With values constantly decreasing, rates of interest decline steadily. The share of the capitalist and landowner, therefore, tends to dwindle in proportion although it enlarges in amount, while the portion of the laborer tends as surely to increase both relatively and absolutely. This statement Carey calls "the most beautiful of all the laws recorded in the book of science," and embellishes it with an elaborate parable of the axes. This flight of the imagination begins with the primitive stone axe, rented to the laborer for three-fourths of the product, passes on through the periods of bronze and iron, and ends with the iron and steel axe, rented to the laborer for only three-sevenths of the product. Thus the unit, labor, finally acquires a larger return than the unit, capital, and cheerful plenty smiles on every hand. In Mr. Carey's words:

> However great may have been the oppression of the many at the hands of the few, all that is required for promoting and establishing equality generally is the encouragement of the power of association and the development of individuality.

This resounding conclusion opens the way to another, *viz.*:

> That this law concerning the return to capital invested in axes is equally true of all other kinds of capital will be obvious to the reader upon slight reflection.

The stage is now clear for the introduction of man, and for the study of his relations to the land. Even at the outset of

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his career, twenty years before, Mr. Carey had refused to admit that labor must have a smaller return as the margin of cultivation descends. His line of argument foretokens the more elaborate theory of Leroy-Beaulieu at the present day. None of our farms will sell for what they have really cost, so great has been the decline in the value of the labor necessary to make new land equally productive. Therefore rent becomes a constantly diminishing factor, and the farmer finds it continually easier to get a living. The second and, as Carey thought, the final decree of extinction against the Ricardian rent-formula was deduced from a study of the economic evolution of Crusoe the islander, the man-of-all-work for so many philosophers. Mr. Carey girdled the earth and ransacked history to show that human progress has always been from poorer to more fertile soils; that the richer lands offer a greater resistance to cultivation than half-civilized men and needy colonists can overcome. He measures Ricardo's law solely by the assumption that agriculture begins on the richer soils, saying: "The fact exists, or it does not. If it has no existence, the system falls to the ground."[1] The verdict of history upon this point having been recorded for Carey, it follows that the return to labor upon land is always increasing with the enlarging productivity of the soil, as well as in proportion to the power of accruing capital and to the growth of association among men. Again, as before, labor's share outstrips, by comparison, that of capital.

Mr. Carey never belabored David Ricardo without aiming to punish the Rev. Thomas Robert Malthus over Ricardo's shoulders. Malthus was Carey's dearest foe. To the American, Malthusianism was an impious philosophy which, despite the divine command to increase and multiply, interpreted growing numbers to mean growing misery; which enumerated disease and starvation among the Providentially-ordained checks upon population; which sang with a recreant poet: "Carnage is God's daughter," and declared by the tongue of Chalmers: "Were it not for such facts, the race of men would hang upon this overpeopled planet like mites upon a rotten cheese."

[1] Social Science, vol. i, p. 106.

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Carey breaks a vial of red-hot indignation over Malthus' head at the outset:

> Professing to admire free commerce, he teaches that a monopoly of the land is in accordance with a law of nature. Admiring morality, he promotes profligacy by encouraging celibacy. If men and women will marry they may receive the reward of starvation. Desirous to uplift the people, he tells the landowner and the laborer that the loss of the one is the gain of the other. His book is the true manual of the demagogue, seeking power by means of agrarianism, war and plunder.

Was this a prophetic vision of the use that Karl Marx and the socialists would make of the doctrines of Ricardo and Malthus?

Carey's statement of his adversary's position is characteristic:

> 1st. The tendency to evolve exists in lower forms of matter only in a low degree, since matter takes the forms of turnips, cabbages and oysters, with only an arithmetical ratio of increase.
>
> 2nd. In the highest form of matter, the tendency to evolution exists in a high degree, for matter embodies itself in man with an increase by a geometrical ratio.[1]

Mr. Carey objects, first, that the given ratios of production are not only unproven but improbable. Simple organisms multiply more easily and rapidly than complex ones. Generations of ferns render possible the growth of a single oak. Secondly, Malthusianism is contrary to the goodness of God. Only a malicious being could create man without making the amplest provision for the sustenance of the creature. The earth is God's bank, and drafts upon it cannot be dishonored. Misery and vice must not be attributed to a lack of food, when they are really caused by the failure of man to exert the powers that God has given him. The third objection is one drawn from a dubious chemistry. The higher animals are herbivorous. Man is more and more dependent on the plant kingdom. Plants not only furnish food; they play an important part in the manufacture of oxygen. Moreover, plants need carbonic acid gas and derive it from the breath of animals. But the lower animals, enemies to man or useless to him, are disappearing. Human

[1] *Ibid.* I, pp. 91–2.

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population increases, therefore, and provides the breath of life for an increased vegetable food supply. Man, the carbon-source, and the cabbage, the oxygen producer, typify two poles of an economic order. In the equilibrium between them, "the beauty of all natural arrangements does admirably exhibit itself."[1] Thus Malthus is pulled down with one hand, and Dr. Graham and the vegetarians are bolstered up with the other.

Herbert Spencer's article in *The Westminster Review* for April, 1852, provided the fourth objection. Man's cerebral and reproductive functions are antagonistic in development; as Carey phrases it: "The degree of fertility varies inversely as the nervous system." Consequently the pressure of population upon the means of subsistence is greater in earlier than in later stages of society. Proofs and illustrations are discovered in craniology and biology; in the assertion that famous men of high brain-power have had few children or none at all; in the fact that the codfish produces a million eggs at once, while the sagacious shark is comparatively sterile; and, lastly, in the proverbial fertility of people like the Irish, who are mere drudges in condition, devoid of the advantages of association in labor, and strangers to mental discipline. Population is, therefore, normally self-regulative.

The undersong which runs through all of Carey's harmonies is: the power of association. Association signifies an alliance of diverse industries, adapted to promote universal national productivity and to achieve economic independence. Of two tendencies visible in society, one is leading towards centralization, the other towards decentralization. Centralization, in the field of economics, implies that international division of labor which must attend freedom of trade and by which each nation develops only the superior natural resources peculiar to itself. Despotic power then lies in the hands of the middlemen who control the world's exchanges. The place where these traders congregate becomes the world's mart. There alone raw produce can be advantageously exchanged and transformed into finished products, which are sold to the distant producer at a double

[1] *Ibid.* III, p. 319.

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profit to the middleman. Such is the vaunted English free-trade policy, which hopes to obtain a monopoly of manufactures and of the world's carrying trade. Other nations must betake themselves to agriculture. Their artisan industries will be crushed by the force of adverse capital. Their competition to sell raw produce to the English manufacturer will enthrone him as the autocrat of the business world, to which London will be what Rome was to the republic. England has done much to annihilate the mechanical industries of Ireland and of India. The United States, though emancipated politically from England, can still be kept industrially subordinate. Men scattered upon farms lose their capacity for combined effort, and, in the absence of an artisan class, slave labor with its concomitant degradation will be ineradicable.

To this picture of international comity, Carey contrasts the effects of decentralization. The revolution of the commercial world around London must be checked or modified. Local and national centres of attraction must be created. The mighty centripetal force of British commercial supremacy must be counteracted by governmental action, and protective tariffs must be interposed between the nations and the baleful rays from London 'Change. Then Adam Smith's advice to export finished articles rather than raw materials can be obeyed. The monopoly of the English manufacturers will cease. The ruinous transportation tax will partially disappear; for numerous and active domestic markets will be within reach. Raw materials, including labor, will command a relatively high price, to which the value of manufactured articles will gradually approximate. Earth products will be consumed near the place of origin, whereby the annual drain upon mother earth will be substantially repaid. In the young communities, farming will no longer be the only lucrative occupation. A middle class of working men and women will arise, slave labor will be swept away, patriotic national feeling will be developed, and the wilderness will blossom as the rose.

One of Mr. Carey's quaintest methods of illustration was the use of deftly-fashioned word-chains, which he hung like fringes

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here and there upon the tissue of his argument. It seems as if the steady flow of the text grew irksome to the vivacious writer, and caused him to plunge into cascades like this :

> Matter, force, motion, men, association, complexity of interests, decentralization, harmonious increase of power.

In the reverse, the links of the chain become :

> Matter, force, motion, man, separation of the units, centralization of the mass, subjection of the many to the powerful few, slavery, stagnation, decrease of real civilization.

These comprehensive speculations concerning association and decentralization Mr. Carey repeats, as Roscher says, "with unwearying wearisomeness." Dissertations upon population, capital, rent or wages were all avenues to the same goal — the national need of a protective tariff. Was there an agitation for an international copyright law? Carey's nimble pen hastened to denounce the obliteration of national barriers and the formation of publishers' monopolies. He urged also that the best thinkers would derive no benefit from the proposed law, for their books are usually unsaleable. Again, did the periodic recurrence of business depressions dishearten some? Carey could demonstrate that centralizing free trade was the cause and decentralizing protection the remedy. Referring to the crash of 1857, William Cullen Bryant remarked in the *Evening Post* that crises are epidemics against which human prudence can no more provide than it can against scarlet fever or cholera. Such a sentiment was to Carey as a bugle blast to a charger. He addressed to Mr. Bryant a long series of letters, opening with the familiar text: "Can it be that a beneficent Providence has so adjusted the laws under which we live that laborers *must* be at the mercy of those who hoard food and clothing with which to purchase labor?" Then follow the usual arguments and admonitions: "Bring the consumer to the producer, the loom and spindle to the plough and harrow, the societary movement will become more regular," *etc.* Bryant took no more formal notice of these letters than to say, editorially, that the tariff

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question was not the topic of the time, and that, if Mr. Carey wanted an antagonist, Mr. Bryant would refer him to one Henry C. Carey, of Philadelphia, who, about twenty years before, had demonstrated in three volumes of *Political Economy* that the happiness and wealth of a people resulted from its freedom of trade. The struggle, Mr. Bryant thought, would last three or four years, for the contestants were both voluminous writers; but Mr. Carey would have the advantage of already knowing thoroughly his opponent's positions. When Mr. Carey had won the victory, his associates in the Pennsylvania iron mills would probably erect a cast-iron statue to the conqueror.

The supercilious tone of this unhandsome response illustrates very well the contempt felt for the persistent heresies of the outcast from the synagogue. The date of this passage at arms was January 14, 1860. In view of the tremendous issues that were then shaping themselves, Carey's answer, a week later, seems somewhat plaintive: "In this state and Jersey, the tariff is the one and almost the only question." But suffice it to remember that, to Carey's mind, slavery and protection were related as bane and antidote. He was by no means ignorant of the "irrepressible conflict," nor had he been loath to enter it. He thought of slavery as an economic evil, to be suppressed by economic means. In book and pamphlet he had attacked the Southern system of degraded labor, and argued that free labor would conduce to greater wealth. "Slavery," he pleaded, "must stand or fall with free-trade." In describing the effect upon the South of the development of factories and of an artisan class, he quoted approvingly from the newspaper literature of the day a description of the transformation wrought upon a Southern "cracker" neighborhood by the establishment of a manufactory.

> They come barefooted, dirty, and in rags; they are scoured, put into shoes and stockings, set at work, and sent regularly to Sunday School. . . . Some of the girls, now well dressed and even pretty and intelligent, were a year ago at work in the fields plowing with a horse, or hoeing corn. Since Christmas, over forty marriages between male and female operatives have taken place.

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The system of slave labor could not ultimately compete with such manifestations of the power of association and decentralization.

It should not be forgotten, especially by Mr. Carey's modern followers, that he believed himself to be the consistent champion of the principles underlying a wise and healthy freedom of trade. He denied that England's system was true free trade. "Free trade, as ultimated in England," he wrote to Henry Wilson, "is the most debased ignorance, the most abhorrent cruelty, the most disgusting vice and the most heart breaking misery that can be seen in any country calling itself civilized and Christian." Carey depicted the final international free trade as an exchange of surplus products between industrially-developed nations, whose range of production should be limited only by absolute natural barriers. With this conception in his mind, he wrote:

> Of the advantage of perfect free trade there can be no doubt. What is good between the states ought to be good the world over. But free trade can be successfully administered only after an apprenticeship of protection. Strictly speaking, taxation should all be direct. Tariff for revenue should not exist. Interference with trade is excusable only on ground of self-protection. A disturbing force of prodigious power prevents the loom and spindle from taking and keeping their proper places by the plow and harrow. When the protective régime has counteracted the elements of foreign opposition, obstacles to free trade will disappear and the tariff will pass out of existence. Wars will cease; for no chief magistrate will dare to recommend an increase of direct taxation.

This millennial vision, however, was never seen, excepting in the remote distance. The tariff, which was to be the road to Paradise, never appeared to be too strait and narrow, and proposals to soften its asperities always elicited remonstrances from Henry C. Carey.

Carey's protectionist hobby carried upon its back a theory of money. Hume, Smith and Mill were derided for their doctrine that money serves only as a symbol, and is the most unprofitable part of a nation's capital. Carey advised nations as well as men to put money in their purses. Money tends always to flow

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towards places where increased association has made business brisk and circulation rapid. These are the homes of stable prices and growing credit. Here alone credit-money is useful and necessary. National independence will be best subserved by a domestic non-exportable currency, while the gold dollar should be a unit of international currency. The domestic exchanges will then be less liable to disturbance from the fluctuations of the value of the precious metals. The Morrill Tariff of 1862, and the National Banking Act of 1863, with the concurrent and resultant issues of greenbacks and well-secured bank bills, fairly realized Carey's ideal. Professor Thompson, indeed, is authority for the statement that

> Carey was the trusted adviser of both Lincoln and Chase, and the latter submitted to Carey the plan for a national banking system — only to find Carey's predictions about the weak points of the first draft fully confirmed by experience.

In Carey's estimate of the value and efficiency of a national banking system and of a national bank-note currency, there was no shadow of variation. From the liberal banking theory which he had advocated at the beginning of his career he never swerved. Although his name was popularly, and justly, identified with the Greenback party of later times, he never joined or encouraged the attack of the multitude upon banking institutions and bank-money. Banks of issue, he argued, are essential as springs of local business life. Mr. Carey incurred greater odium by his opposition to contraction of the paper currency after the war, than by his advocacy of a protective tariff before the war. Perhaps it is, even yet, too early to say what the final judgment upon that financial policy will be. Carey believed that it inflicted needless suffering upon debtors. His thesis was that an increasing business demands an increasing currency. In a series of letters to Secretary McCulloch (1866), Mr. Carey ridiculed the idea that, while population had increased by one-third and production had trebled since 1860, the secretary should propose to reduce the amount of greenbacks by one-half in five years and to decrease the bank circulation to the figures of 1860.

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The discredit of the existing currency would paralyze the industries of the country. Wall Street had become, like London, a universal and ungenerous creditor, finding a profit in keeping up the rate of interest. Carey predicted that swift contraction would sow a crop of wild monetary plans, especially among the holders of mortgaged Western farms, — a prediction fully verified during the harvest of greenbackism.

He censured also the sale of United States bonds in foreign markets, asserting that specie payments could not be safely resumed until the national debt was held at home. Sherman's project of resumption, Carey opposed, fearing that the supply of gold was too small and uncertain. It is strange that Carey's optimistic faith in the country's prosperity did not render him as sanguine in this instance, at least, as the Ohio statesman. His support of bi-metallism and of the remonetization of silver as the best security for a stable national currency in the United States, would not now invite ridicule as it seemed to do fifteen years ago. To-day's heresies are ever likely to become to-morrow's dogmas.

III. *Carey's Work and Character.*

To many, a criticism of Carey's thought would seem futile, because the mere statement of the system must carry with it an ample refutation and condemnation. Contemporary orthodox economists greeted Carey's effusions with contempt, and professors of political economy held him up to their classes as a dreadful example of the "infelicities of half-knowledge." Others intimated, as Mr. Bryant did, that Carey's desertion from the orthodox host was due to selfish or mercenary motives. Mr. Carey may have mistaken economic rhetoric for economic laws, but he was not venal. Neither the man nor his work deserves to be dismissed with a sneer. Measured by results, the Carey school, and not its opponent, has achieved success in the United States. For thirty years, the stone which the builders rejected has been the head of the corner. Carey and his friends never captured our colleges; but, for a generation, they have dominated

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five-sevenths of the newspaper offices, a pulpit far more influential than the professorial chair. The arguments to which Carey gave form and eloquence are in the mouths of more than half the business men and farmers of our country; and, in the last Presidential campaign, the Republican party re-affirmed the extremest principles of the Carey school, including even the rancor towards England, with a violence and absoluteness that would probably have surprised Carey himself.

That Mr. Carey was not a philosophical system-maker, is as sure as that he aspired to be one. From manhood to old age he dreamed in his sanguine way of correlating the universe; and his last pretentious utterance, *The Unity of Law* (1872), was an endeavor to depict that complete world-order which he imagined. As in his younger days, he was conscious of failure; yet he was content to be judged by his ideal, however unrealized. Mr. Carey avowedly sacrificed the political economist to the social scientist. Not wealth but man, was the burden of his thought. Yet to call him a social scientist seems too generous; for he passed by the political, religious and intellectual development of the human race with scant notice. An argument against England's commercial system, a philippic against Malthus and a summer's harvest of aphorisms and definitions could scarcely constitute a complete philosophy of anything.

Mr. Carey had neither the education nor the natural ability which might have enabled him to plod. The wings of his fancy were perpetually lifting him from the ground of sober reasoning and wafting him away on the aërial currents of decentralization, association, and other polysyllabic elements. But these bird's-eye views brought their compensations. Accuracy was lost, but breadth was gained. He saw no one thing closely, but he saw more things. The human interest, which must be the only large and inclusive one, stretched from rim to rim of his vision. When Professor Sumner says that, if he were to live his life over again, he would devote himself to social science rather than to political economy, he partially justifies the attitude of a man who was, in most respects, his antipode. Mr. Carey refused to consider political economy, social science or any other

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single branch of knowledge as an unrelated subject. It was just this interest in the relations of things — this wide view — that his exact critics often lacked. Francis Lieber, in his superficial pamphlet on *The Fallacies of Protection*, in reply to Carey, said: "There are no miles in political economy." Carey was in accord with the best modern thought, in the reply that miles are of more practical importance to the economist than abstract statements of laws, and that a political economy with the "miles" taken out of it is valueless.

Between Carey and his orthodox foes there was little common ground. Carey's bases were the harmony of all interests and the need of a national development. The opposite party built upon *laissez faire*, unrestricted competition and the economic needs of a world community. Even admitting the principle of Carey's fierce optimism, there is no difficulty in disputing his applications of it. Using his own favorite method of illustration, one may observe that discordant notes are often contributory to the grandest harmonies. The germ of weakness in Carey's version of the universal harmony was his agreement with Rousseau in the goodness of the natural man and of the natural impulses. In this respect, he embodied the faith of the Jeffersonian democracy amidst which he was reared. An infusion of dour New England Calvinism would have gone far to redeem the man; but then there would have been no Carey.

He overlooked the probability that hatred, self-interest and avarice will exert the power of association as freely as the benevolent qualities can, and that the might of swiftly growing capital will surely be swayed by selfishness. After all, the assertions that labor profits by the accumulations of the past, and that values tend to decline, only remotely suggest a millennium. That "beautiful law of nature," according to which labor will finally become richer than capital, carries little comfort to a generation that is compelled to resort to socialistic measures for repressing the rapacity of corporations and of individual monopolists. Even Carey had his warning, and responded to it manfully. Soon after his removal to Burlington, N. J., in 1833, circumstances called to his notice the despotic assump-

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tions of the Camden and Amboy Railway Company, its flagrant disregard of popular welfare, its partialities and arbitrary exactions. To know was to act. He opened and led an aggressive campaign of public letters and pamphlets against the abuse of corporate powers. After a protracted struggle, the seat of war was transferred to legislative halls, where the corporation was finally defeated and restrained by suitable enactments. So the champion of protection, which, as a huge example of governmental interference, is but an introductory stage to governmental ownership, was naturally prominent in the initial agitation in this country for governmental regulation of railway monopolies. The possibility that manufacturing monopolies might threaten the national well-being probably never occurred to him.

Contrast still further a few of the principal positions of the opposing camps.[1] Where Mr. Carey called labor the source of value without exception, the classical school affirmed labor to be the source of value in products, with some exceptions, but not in land, which has natural value. The former definition, however incomplete, is the popular one and receives the socialist allegiance. Again, Carey explained rent as the interest on the capital which makes land productive. The classical school declared that rent is distinct from interest on capital, and that it is paid for the use of inherent powers of the soil. Modern economists recognize both these elements as "fictitious rent" and "rent proper" respectively, applying the Ricardian formula to the latter only.

To criticize Carey's exposition of rent would be to commit the folly of thrice slaying the slain. Gen. Francis A. Walker's essay upon *Land and its Rent*[2] has spoken the last necessary word in demonstrating that Carey's attack could not even graze the Ricardian formula. Quite as unfortunate was Carey's argument that, since more labor has been applied to the soil than the land is now worth, land must owe all its value to that labor. This *non-sequitur* recalls the ancient remark of the flies upon the

[1] See the *New York Review*, July, 1838.

[2] Walker, Land and its Rent, p. 35.

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oxen: "See what a dust we raise." Once more, Carey would say that, with the progress of society, the profits of labor and of investment increase, but the share of the landholder disappears, while population tends to press more lightly on the means of living. His antagonists averred that, with the progress of society, the profits of labor and of investment decrease, but the share of the landholder grows, while population tends to press more closely upon the means of living. The first two statements on either side are not so irreconcilable as they appear. Ricardo speaks absolutely and of a limited period of time. Carey speaks relatively and of an indefinite period of time. Ricardo estimated conditions as fixed quantities, and proceeded upon an implied assumption that all men of whatsoever nationality would act alike under similar influences at a given time. Carey grasped firmly the notion of different phases of evolution, and his constant use of history afforded him a fertile background of allusion, and perhaps of illusion, of which the severe simplicity of the classical school was quite guiltless.

Of Malthus's speculations, Carey was simply unable to appreciate the real intent and scope. Realizing, however, that they struck at some of the roots of his cheerful optimism, he collected all the counter-arguments that the wit of others had suggested or his own imagination had devised. The doubtful objections of Spencer and others, drawn from chemistry, biology and craniology, he accepted with enthusiastic satisfaction; while his own comparison of the earth to a bank, of which the Almighty is the cashier, was rather poetical than scientific or relevant.

Of Adam Smith, or rather, of Adam Smith in his lucid intervals, Carey professed himself a disciple. Although he expressed attachment to the master, he was compelled to make periodical appeals from Philip drunk to Philip sober. Oft-repeated quotations from *The Wealth of Nations*, indicating the great free trader's desire to nourish domestic markets and manufactures and to reduce costs of transportation, were rolled as sweet morsels under Carey's tongue.

With the mercantilists of the seventeenth and eighteenth centuries, Carey had much affinity. He represents the transi-

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tion of mercantilism into the national economy of the modern time. Professor Adolf Held, indeed, maintains that mercantilism is the kernel of Carey's system;[1] but if so, the kernel has undergone great transformation. For the mercantilist maxim that the economic well-being of a state is proportional to the quantity of money circulating in it, Carey would have substituted "proportional to the rapidity of the monetary circulation." He welcomed the increase of the instrument of exchange as a proof of the growth of association, and as a cause of approximation between the prices of raw and of finished products. Not until the dotage of his Greenback days did he apparently harbor the thought of distributing money from government vans in the mortgaged West, like food from soup-kitchens for the poor. Mr. Carey, moreover, was not friendly to treaties of reciprocity. He demanded full freedom for credit-money. With the methods by which the mercantilists hoped to swell the home supply of metal money, Carey's scheme for a national currency could have but little sympathy. A colonial system, which was a favorite adjunct to the mercantilist theory, was the object of Carey's fiercest denunciation. Colonies imply dependence, and the chief dogma of Carey's gospel was the necessity of local independence. He even deplored the rapid settlement of the western and the southwestern portions of this country, attributing the westward rush to the colonial position of the United States with reference to England and London. He contended that the people, increasing compactly along the Atlantic sea-board, should have extended westward only as the gradual development of population and of civilization compelled and warranted such an expansion. The closest bond between Carey and the mercantilists was their common advocacy of protective duties. Yet there is still an obvious difference. Carey preached protection, not that money might flow in to pay for an excess of exports, but in order, as he supposed, to develop the whole producing power of a nation. National completeness was his touchstone. A favorable balance of trade was the test of the mercantilists. The efforts of the lat-

[1] Adolf Held, Carey's Socialwissenschaft und das Merkantilsystem (Würzburg 1866).

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ter to cheapen raw materials, including labor, seemed to Carey destructive of social welfare. "What," he exclaimed, "must have been the condition of the English laborer when the German could boast, as he did one hundred and fifty years ago, that he bought of the Englishmen the skin of a fox for a groat, and sold them the tail for a shilling!"

The greatest of mercantilists, Colbert, was, however, Carey's ideal statesman. Ever and anon, he turned aside from the highway of his thought to erect little temples to Decentralization, wherein he invited the reader to worship at the shrine of Colbert and to swear upon the altar eternal hate to England's commercial creed. In the protective measures by which the genius of Colbert transformed the face of France, the theories of Carey and of Friedrich List alike found a source and, to some extent, a commentary.

Carey played much the same part in the United States that List, to whom he was without doubt profoundly indebted, played in Germany. A spirit of national unity and national industrial freedom were the objects of each. Each received prompt professional condemnation and final popular approval. But the "national" doctrine achieved recognition among German economists, when it was scorned and spurned by the Manchester school in England and the United States. The so-called "historical school" was partly an outgrowth or expansion of the "national" idea, and Roscher and Carey met in the former's dictum that man is both subject and object of economic science.

Chiefly from the loins of the historical school sprang the various groups of *catheder-socialisten*, who dominate to-day the world of German economics. They are the great-grandchildren of mercantilism, and members of the household of Carey and List. From them the contagion of the family has returned to the shores of the United States. It has permeated economic circles with the spirit of revolt until the old sanctuary has become almost deserted.

In the field of politics, German and American national economists fought out similar battles to similar conclusions. National consolidation was their aim, and in both countries they were

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among the foremost partisans of a closer union. List urged that an economic union of the German people would break down the props of particularism in the petty territorial divisions and facilitate a political union; and so it was. In the United States, Carey and the party to which he belonged, struggling for national solidarity, were confronted by a separatist caste, whose pet institution, slavery, could be maintained only by banishing mechanical industries and by dividing and diminishing national powers. Mr. Carey was actively patriotic at a time when patriotism, to the majority of citizens in the North at least, meant folding the hands and shutting the eyes. His cry of "Factories for the South" may have implied an underestimation of slavery as a political factor. It is easy to laugh at those poor white girls who were scoured, sent to Sunday-school and married at the rate of ten per month, but it is nevertheless true that factories and slavery were deadly enemies. Carey's words in 1854 are worth heeding thirty-six years later. To-day, the growth of an artisan and mechanic class in the South may be most potent in eradicating the remaining evils of a feudal civilization. It is not from perversity that Germany and the United States have both donned protectionist armor, either during, or soon after, a successful war for national unity. The fact is but a witness to the strength and scope of the national idea. The philosophic conceptions of the nation and the state which underlie the national economic theory and which lend to the protectionist belief whatever real justification it may have, are now evolving, upon a scale as yet unmeasured, the forces of socialism. Is it not significant, that Germany and the United States are the two great countries in which the divers gospels of socialism do most prevail and have the largest number of intelligent apostles? If protection reaches its logical outcome, if the horn of nationalism is exalted with honor and the socialistic organization of the state arrives with the twentieth century, Carey and his associates will be canonized as forerunners and prophets of the new dispensation.

One undeniable service Carey and other opponents of the classical school have rendered to their science in their own

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day and generation. They helped to destroy the politico-economic manikin which used to be the dummy of the doctrinaires. Modern economists have learned to see the human blood in human veins. They are quick to recognize the powerful intervention of moral forces in economic evolution. They no longer shut their eyes to the freedom of the will and the strength of the affections. So far the same mind is in them that was in Carey.

Mr. Carey's intellectual life unfolded in a day of experiments: experiments in business with railways, banks, and steamboats; experiments in religion and society with phalansteries and communes; and experiments in politics amid the dissolution of parties. Into this crude chaos of American life, Henry C. Carey brought a sensitive, sympathetic temperament and an impressionable mind. He inherited with his Hibernian blood a disposition prone to the contradiction of asserted claims, to persistent obstinacy, to ardent and implicit confidence in whatever he had once accepted. The nemesis of ancestry haunts the existence of every man, and the career of Carey is the magnified reflection of his father's life. Both men obtained an education in a printing office. In 1810, the father advocated the renewal of the charter of the United States Bank. The son was a life-long champion of a national banking-system. The father, ten years later, published a book which tried to demonstrate the harmony of the real interests of the various portions of society. That principle was the son's shibboleth. Father and son entered the lists against Malthus, the elder Carey's publication bearing the date, 1828.[1] In 1820, the father was instrumental in forming the Philadelphia Society for the Promotion of National Industry, and the honorable John Sergeant said that Pennsylvania owed more to Mathew Carey than to any other man for the creation of a public spirit in the support of domestic interests.[2] From 1822 onward, Mathew Carey vouchsafed to the world more than two thousand pages

[1] Essays on the Public Charities of Philadelphia (1828).

[2] See Account of the Dinner given to Professor List, in Philadelphia, Nov. 3, 1827 (pamphlet, in the *Boston Athenæum*).

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of violent protectionist polemics. A large portion of Henry Carey's thirteen octavo volumes, three thousand unbound pages and manifold newspaper contributions had the same end in view. Mathew Carey was a frequent visitor to Donnybrook Fair, quarrelling and sympathizing with equal readiness and zeal. The son's warfare was more purely literary, but the fervent Celtic character shines out in his hot denunciations of Malthus and of England's policy of trade. He was a dangerous enemy and difficult to deal with; for he never knew when he was beaten, and never contemplated the possibility of ultimate defeat.

The ablest logician may use faulty syllogisms when he has predetermined his conclusions. The most sensible historian becomes fanatical sometimes, when his facts concern his personal enthusiasms. Mr. Carey was neither a logician nor a historian. He knew neither the careful training of the one nor the cultured impartiality of the other. Like other men of his warm-hearted race, he was apt to mistake striking analogies for flawless logic, and a quick appreciation for a discriminating spirit. He was incapable of that slow and patient analysis which is the mark of a scientific spirit in investigation. His mode of judgment was too emotional and intuitive. He appeared to employ inductive methods, but his induction was only the handmaid to a deductive system. He scanned the page of history that he might confirm opinions rather than that he might form them.

It is remarkable that the blood which flowed in his veins conveyed so little of the gift of humor. If his sense of the ludicrous had been stronger, he would have wasted fewer blows on thin air, and would have been more conscious of his own limitations. He was always seeing men as trees walking. He confounded Malthus with misery and Ricardo with extortionate rents. A fundamental defect of his mind was this rudimentary sense of mental perspective. He was ever busy with the relations of things; but abstractions must become tangible, if possible personal, in order to be fully intelligible to him. Starting with a denial of the utility or truth of the

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abstract economic science taught by the Manchester school, he speedily hit upon a concrete embodiment of that science in the ubiquitous English trader. His dispassionate negation of the sovereignty of selfishness rose to a shriek of indignation against individuals. Calm, direct consideration was supplanted by a vigorous iteration that would have been tedious, if his diction had been less copious and his style less clear.

His mind was eager to assimilate and abnormally synthetic. His *Social Science* narrowly escaped including a handbook of universal history and of the natural sciences. Facts, figures and theories were educed from the four quarters of heaven, and, in the luminous atmosphere of Carey's phrase, seemed to fit together as perfectly as the old Greek mason-work. The whole structure was illuminated and rendered attractive by an all-pervading enthusiasm, an attribute too generally lacking in the works of his orthodox contemporaries. The glow of Carey's sympathetic optimism might often suffice to excite unfounded anticipations in the too-generous reader, and to beguile him, as it apparently beguiled the author, into the logical pitfalls of the false cause.

Penetrating through those enveloping qualities of Carey's life, which neutralized so much of his possible usefulness and which have led so many half-cultured minds astray, — his defective education, his untrained, emotional temperament, his arbitrary zeal, his over-confidence, — the critical student in the future may still discern this wholesome core: an honest man in earnest, who had the strength to hope for the future of laborers and of all mankind, who had the grace to prefer the growth of a national spirit to the immediate increase of a national income, and who possessed the grace and strength combined to give the lie to that golden rule of the gospel of dollars: "It is the chief end of a state's economy to buy in the cheapest market and to sell in the dearest."

CHARLES H. LEVERMORE.

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THE EVOLUTION OF COPYRIGHT.

"THE only thing that divides us on the question of copyright seems to be a question as to how much property there is in books," said James Russell Lowell two or three years ago; and he continued,

but that is a question we may be well content to waive till we have decided that there is any property at all in them. I think that, in order that the two sides should come together, nothing more is necessary than that both should understand clearly that property, whether in books, or in land, or in anything else, is artificial; that it is purely a creature of law; and, more than that, of local and municipal law. When we have come to an agreement of this sort, I think we will not find it difficult to come to an agreement that it will be best for us to get whatever acknowledgment of property we can, in books, to start with.

"An author has no natural right to a property in his production," said the late Matthew Arnold, in his acute and suggestive essay on copyright,

but then neither has he a natural right to anything whatever which he may produce or acquire. What is true is that a man has a strong instinct making him seek to possess what he has produced or acquired, to have it at his own disposal; that he finds pleasure in so having it, and finds profit. The instinct is natural and salutary, although it may be over-stimulated and indulged to excess. One of the first objects of men, in combining themselves in society, has been to afford to the individual, in his pursuit of this instinct, the sanction and assistance of the laws, so far as may be consistent with the general advantage of the community. The author, like other people, seeks the pleasure and the profit of having at his own disposal what he produces. Literary production, wherever it is sound, is its own exceeding great reward; but that does not destroy or diminish the author's desire and claim to be allowed to have at his disposal, like other people, that which he produces, and to be free to turn it to account. It happens that the thing which he produces is a thing hard for him to keep at his own disposal, easy for other people to appropriate; but then, on the other hand, he is

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an interesting producer, giving often a great deal of pleasure by what he produces, and not provoking nemesis by any huge and immoderate profits on his production, even when it is suffered to be at his own disposal. So society has taken him under its protection, and has sanctioned his property in his work, and enabled him to have it at his own disposal.

Perhaps a consideration of the evolution of copyright in the past will conduce to a closer understanding of its condition at present, and to a clearer appreciation of its probable development in the future. It is instructive as well as entertaining to trace the steps by which men, combining themselves in society, in Arnold's phrase, have afforded to the individual author the sanction of the law in possessing what he has produced; and it is no less instructive to note the successive enlargements of jurisprudence by which property in books — which is, as Lowell says, the creature of local municipal law — has slowly developed until it demands and receives international recognition.

I.

The maxim that "there is no right without a remedy," indicates the line of legal development. The instinct of possession is strong; and in the early communities, when most things were in common, it tended more and more to assert itself. When anything which a man claimed as his own was taken from him, he had a sense of wrong, and his first movement was to seek vengeance — much as a dog defends his bone, growling when it is taken from him, or even biting. If public opinion supported the claim of possession, the claimant would be sustained in his effort to get revenge. So, from the admission of a wrong, would grow up the recognition of a right. The moral right became a legal right as soon as it received the sanction of the state. The state first commuted the right of vengeance, and awarded damages, and the action of tort was born. For a long period property was protected only by the action for damages for disseisin; but this action steadily widened in scope until it became an action for recovery; and the idea of possession or seisin broadened into the idea of ownership. This development

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went on slowly, bit by bit and day by day, under the influence of individual self-assertion and the resulting pressure of public opinion, — which, as Lowell once tersely put it, is like that of the atmosphere: "You can't see it, but it is fifteen pounds to the square inch all the same."

The individual sense of wrong stimulates the moral growth of society at large; and in due course of time, after a strenuous struggle with those who profit by the denial of justice, there comes a calm at last and ethics crystallize into law. In more modern periods of development, the recognition of new forms of property generally passes through three stages. First, there is a mere moral right, asserted by the individual and admitted by most other individuals, but not acknowledged by society as a whole. Second, there is a desire on the part of those in authority to find some means of protection for this admitted moral right, and the action in equity is allowed — this being an effort to command the conscience of those whom the ordinary policeman is incompetent to deal with. And thirdly, in the fulness of time, there is declared a law setting forth clearly the privileges of the producer and the means whereby he can defend his property and recover damages for an attack on it. This process of legislative declaration of rights is still going on all about us and in all departments of law, as modern life develops and spreads out and becomes more and more complex; and we have come to a point where we can accept Ihering's definition of a legal right as "a legally protected interest."

As it happens, this growth of a self-asserted claim into a legally protected interest can be traced with unusual ease in the evolution of copyright, because copyright itself is comparatively a new thing. The idea of property was probably first recognized in the tools which early man made for himself; and in the animals or men whom he subdued; later, in the soil which he cultivated. In the beginning the idea attached only to tangible things — to actual physical possession — to that which a man might pass from hand to hand. Now in the dawn of history nothing was less a physical possession than literature; it was not only intangible, it was invisible even. There

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was literature before there was any writing, before an author could set down his lines in black and white. Homer and the rhapsodists published their poems by word of mouth. *Litera scripta manet;* but the spoken poem flew away with the voice of the speaker and lingered only in the memory. Even after writing was invented, and after parchment and papyrus made it possible to preserve the labors of the poet and the historian, these authors had not, for many a century yet, any thought of making money by multiplying copies of their works.

The Greek dramatists, like the dramatists of to-day, relied for their pecuniary reward on the public performance of their plays. There is a tradition that Herodotus, when an old man, read his *History* to an Athenian audience at the Panathenaic festival, and so delighted them that they gave him as a recompense ten talents — more than twelve thousand dollars of our money. In Rome, where there were booksellers having scores of trained slaves to transcribe manuscripts for sale, perhaps the successful author was paid for a poem, but we find no trace of copyright or of anything like it. Horace (*Ars Poetica*, 345) speaks of a certain book as likely to make money for a certain firm of booksellers. In the other Latin poets, and even in the prose writers of Rome, we read more than one cry of suffering over the blunders of the copyists, and more than one protest in anger against the mangled manuscripts of the hurried servile transcribers. But nowhere do we find any complaint that the author's rights have been infringed; and this, no doubt, was because the author did not yet know that he had any wrongs. Indeed, it was only after the invention of printing that an author had an awakened sense of the injury done him in depriving him of the profit of vending his own writings; because it was only after Gutenberg had set up as a printer, that the possibility of definite profit from the sale of his works became visible to the author. Before then he had felt no sense of wrong; he had thought mainly of the honor of a wide circulation of his writings; and he had been solicitous chiefly about the exactness of the copies. With the invention of printing there was a chance of profit; and as soon as the author saw this profit diminished by an unauthorized

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reprint, he was conscious of injury, and he protested with all the strength that in him lay. He has continued to protest from that day to this; and public opinion has been aroused until by slow steps the author is gaining the protection he claims.

It is after the invention of printing that we must seek the origin of copyright. Mr. De Vinne shows that Gutenberg printed a book with movable types, at Mentz, in 1451. Fourteen years later, in 1465, two Germans began to print in a monastery near Rome, and removed to Rome itself in 1467; and in 1469 John of Spira began printing in Venice. Louis XI sent to Mentz Nicholas Jenson, who introduced the art into France in 1469. Caxton set up the first press in England in 1474.

In the beginning these printers were publishers also; most of their first books were Bibles, prayer-books, and the like; but in 1465, probably not more than fifteen years after the first use of movable types, Fust and Schoeffer put forth an edition of Cicero's *Offices*, — "the first tribute of the new art to polite literature," Hallam calls it. The original editing of the works of a classic author, the comparison of manuscripts, the supplying of *lacunæ*, the revision of the text, called for scholarship of a high order; this scholarship was sometimes possessed by the printer-publisher himself; but more often than not he engaged learned men to prepare the work for him and to see it through the press. This first edition was a true pioneer's task, it was a blazing of the path and a clearing of the field. Once done, the labor of printing again that author's writings in a condition acceptable to students would be easy. Therefore the printer-publisher who had given time and money and hard work to the proper presentation of a Greek or Latin book, was outraged when a rival press sent forth a copy of his edition and sold the volume, at a lower price possibly, because there had been no need to pay for the scholarship which the first edition had demanded. That the earliest person to feel the need of copyright production should have been a printer-publisher, is worthy of remark; obviously in this case the printer-publisher stood for the author and was exactly in his position. He was prompt

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to protest against this disseisin[1] of the fruit of his labors; and the earliest legal recognition of his rights was granted less than a score of years after the invention of printing had made the injury possible. It is pleasant for us Americans to know that this first feeble acknowledgment of copyright was made by a republic. The Senate of Venice issued an order, in 1469, that John of Spira should have the exclusive right for five years to print the epistles of Cicero and of Pliny.[2]

This privilege was plainly an exceptional exercise of the power of the sovereign state to protect the exceptional merit of a worthy citizen; it gave but a limited protection; it guarded but two books, for a brief period only, and only within the narrow limits of one commonwealth. But, at least, it established a precedent — a precedent which has broadened down the centuries until now, four hundred years later, any book published in Venice is, by international conventions, protected from pillage for a period of at least fifty years, through a territory which includes almost every important country of continental Europe. If John of Spira were to issue to-day his edition of Tully's *Letters*, he need not fear an unauthorized reprint anywhere in the kingdom of which Venice now forms a part, or in his native land Germany, or in France, Belgium or Spain, or even in Tunis, Liberia or Hayti.

The habit of asking for a special privilege from the authorities of the state wherein the book was printed spread rapidly. In 1491 Venice gave the publicist Peter of Ravenna, and the publisher of his choice, the exclusive right to print and sell his *Phœnix*,[3] — the first recorded instance of a copyright awarded directly to an author. Other Italian states "encouraged printing by granting to different printers exclusive rights for fourteen years, more or less, of printing specified classics," — and thus the time of the protection accorded to John of Spira was

[1] If any lawyer objects to the use of the word "disseisin" in connection with other than real property, he is referred to Prof. J. B. Ames's articles on Disseisin of Chattels, in the *Harvard Law Review*, Jan.–March, 1890.

[2] Sanuto, Script. Rerum. Italic., t. xxii, p. 1189; cited by Hallam, History of Middle Ages, chap. ix, part ii.

[3] Bowker, Copyright, p. 5.

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doubled. In Germany the first privilege was issued at Nuremberg, in 1501. In France the privilege covered but one edition of a book; and if the work went to press again, the publisher had to seek a second patent.

In England, in 1518, Richard Pynson, the King's Printer, issued the first book *cum privilegio;* the title page declaring that no one else should print or import in England any other copies for two years; and in 1530 a privilege for seven years was granted to John Palsgrave "in the consideration of the value of his work and the time spent on it; this being the first recognition of the nature of copyright as furnishing a reward to the author for his labor."[1] In 1533 Wynkyn de Worde obtained the King's privilege for his second edition of Witinton's *Grammar.* The first edition of this book had been issued ten years before, and during the decade it had been reprinted by Peter Trevers without leave — a despoilment against which Wynkyn de Worde protested vigorously in the preface to the later edition, and on account of which he applied for and secured protection. Here again is evidence that a man does not think of his rights until he feels a wrong. Ihering bases the struggle for law on the instinct of ownership as something personal, and the feeling that the person is attacked whenever a man is deprived of his property; and, as Walter Savage Landor wrote: "No property is so entirely and purely and religiously a man's own as what comes to him immediately from God, without intervention or participation." The development of copyright, and especially its rapid growth within the past century, is due to the loud protests of authors deprived of the results of their labors, and therefore smarting as acutely as under a personal insult.[2]

The invention of printing was almost simultaneous with the Reformation, with the discovery of America, and with the first voyage around the Cape of Good Hope. There was in those days a ferment throughout Europe, and men's minds were making ready for a great outbreak. Of this movement, intellectual on one side and religious on the other, the governments

[1] T. E. Scrutton, Laws of Copyright, p. 72.
[2] Ihering, The Struggle for Law (translated by J. J. Lalor).

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of the time were afraid; they saw that the press was spreading broadcast new ideas which might take root in the most inconvenient places, and spring up at the most inopportune moments; so they sought at once to control the printing of books. In less than a century after Gutenberg had cast the first type, the privileges granted for the encouragement and reward of the printer-publisher and of the author, were utilized to enable those in authority to prevent the sending forth of such works as they might choose to consider treasonable or heretical. For a while, therefore, the history of the development of copyright is inextricably mixed with the story of press-censorship. In France, for example, the edict of Moulins, in 1566, forbade "any person whatsoever printing or causing to be printed any book or treatise without leave and permission of the King, and letters of privilege."[1] Of course no privilege was granted to publisher or to author if the royal censors did not approve of the book.

In England the "declared purpose of the Stationers' Company, chartered by Philip and Mary in 1556, was to prevent the propagation of the Protestant Reformation."[2] The famous "Decree of Star Chamber concerning printing," issued in 1637, set forth:

> that no person or persons whatsoever shall at any time print or cause to be imprinted any book or pamphlet whatsoever, unless the same book or pamphlet, and also all and every the titles, epistles, prefaces, proems, preambles, introductions, tables, dedications and other matters and things whatsoever thereunto annexed, or therewith imprinted, shall be first lawfully licensed.

In his learned introduction to the beautiful edition of this decree, made by him for the Grolier Club, Mr. De Vinne remarks, that at this time the people of England were boiling with discontent; and, "annoyed by a little hissing of steam," the ministers of Charles I "closed all the valves and outlets, but did not draw or deaden the fires which made the steam;"

[1] Alcide Darras, Du Droit des Auteurs, p. 169.

[2] E. S. Drone, A Treatise on the Law of Property in Intellectual Productions, p. 56.

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then "they sat down in peace, gratified with their work, just before the explosion which destroyed them." This decree was made the eleventh day of July, 1637; and in 1641 the Star Chamber was abolished; and eight years later the King was beheaded at Whitehall.

The slow growth of a protection, which was in the beginning only a privilege granted at the caprice of the officials, into a legal right to be obtained by the author by observing the simple formalities of registration and deposit, is shown in a table given in the appendix (page 370) to the *Report of the Copyright Commission* (London, 1878). The salient dates in this table are these:

1637. — Star Chamber Decree supporting copyright.

1643. — Ordinance of the Commonwealth concerning licensing. Copyright maintained, but subordinate to political objects.

1662. — 13 and 14 Car. II, c. 33. — Licensing Act continued by successive Parliaments; gives copyright coupled with license.

1710. — 8 Anne, c. 19. — First copyright act. Copyright to be for fourteen years, and if author then alive, for fourteen years more. Power to regulate price.

1814. — 54 Geo. III, c. 156. — Copyright to be for twenty-eight years absolutely, and further for the life of the author, if then living.

1842. — 5 and 6 Vict. c. 45. — Copyright to be for the life of the author and seven years longer, or for forty-two years, whichever term last expires.

From Mr. Bowker's chapter on the *History of Copyright in the United States*, it is easy to draw up a similar table showing the development in this country:

1793. — Connecticut, in January, and Massachusetts, in March, passed acts granting copyrights for twenty-one years. In May Congress recommended the states to pass acts granting copyright for fourteen years, — seemingly a step backward from the Connecticut and Massachusetts statutes.

1785 and 1786. — Copyright acts passed in Virginia, New York and New Jersey.

1787. — Adoption of the constitution of the United States, authorizing Congress "to promote the progress of science and useful arts by securing for limited times, to authors and inventors, the exclusive right to their respective writings and discoveries."

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1790. — First United States copyright act. Copyright to citizens or residents for fourteen years, with a renewal for fourteen years more if the author were living at the expiration of the first term.

1831. — Copyright to be for twenty-eight years, with a renewal for fourteen years more, if the author, his widow or his children are living at the expiration of the first term.

1856. — Act securing to dramatists stage-right; that is, the sole right to license the performance of a play.

1873-4. — The copyright laws were included in the Revised Statutes (sections 4948 to 4971).

From the exhaustive and excellent work of M. Lyon-Caen and M. Paul Delalain on *Literary and Artistic Property*[1] we see that France, now perhaps the foremost of all nations in the protection it accords to literary property, lagged behind Great Britain and the United States in taking the second step in the evolution of copyright. It was in 1710 that the act of Anne gave the British author a legal right independent of the caprice of any official; and as soon as the United States came into being, the same right was promptly confirmed to our citizens; but it was not until the fall of the ancient *régime* that a Frenchman was enabled to take out a copyright at will. Up to the eve of the revolution of 1789, French authors could do no more, say MM. Lyon-Caen and Delalain, "than ask for a privilege which might always be refused them" (page 8). As was becoming in a country where the drama has ever been the most important department of literature, the first step taken was a recognition of the stage-right of the dramatist, in a law passed in 1791. Before that a printed play could have been acted in France by any one, but thereafter the exclusive right of performance was reserved to the playwright; and at one bound the French went far beyond the limit of time for which any copyright was then granted either in England or America, as the duration of stage-right was to be for the author's life and for five years more. It is to be noted, also, that stage-right was not acquired by British and American authors for many years after 1791.

[1] La Propriété Littéraire et Artistique: Lois Françaises et Étrangères (Paris, Pichon, 1889, 2 vols.).

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Two years after the French law protecting stage-right, in the dark and bloody year of 1793, an act was passed in France granting copyright for the life of the author and for ten years after his death. It is worthy of remark that, as soon as the privileges and monopolies of the monarchy were abolished, the strong respect the French people have always felt for literature and art was shown by the extension of the term of copyright far beyond that then accorded in Great Britain and the United States; and although both the British and the American term of copyright has been prolonged since 1793, so also has the French, — and it is now for life of the author and for fifty years after his death.

The rapid development of law within the past century and the effort it makes to keep pace with the moral sense of society — a sense that becomes finer as society becomes more complicated and as the perception of personal wrong is sharpened — can be seen in this brief summary of copyright development in France, where, but a hundred years ago, an author had only the power of asking for a privilege which might be refused him. The other countries of Europe, following the lead of France as they have been wont to do, have formulated copyright laws not unlike hers. In prolonging the duration of the term of copyright, one country has been even more liberal. Spain extends it for eighty years after the author's death. Hungary, Belgium and Russia accept the French term of the author's life and half a century more. Germany, Austria and Switzerland grant only thirty years after the author dies. Italy gives the author copyright for his life, with exclusive control to his heirs for forty years after his death; after that period the exclusive rights cease, but a royalty of five per cent on the retail price of every copy of every edition, by whomsoever issued, must be paid to the author's heirs for a further term of forty years: thus a quasi-copyright is granted for a period extending to eighty years after the author's death, and the Italian term is approximated to the Spanish. Certain of the Spanish-American nations have exceeded the liberality of the mother-country: in Mexico, in

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Guatemala and in Venezuela the author's rights are not terminated by the lapse of time, and copyright is perpetual.[1]

To set down with precision what has been done in various countries, will help us to see more clearly what remains to be done in our own. It is only by considering the trend of legal development that we can make sure of the direction in which efforts toward improvement can be guided most effectively. For example: the facts contained in the preceding paragraphs show that no one of the great nations of continental Europe grants copyright for a less term than the life of the author and a subsequent period varying from thirty to eighty years. A comparison also of the laws of the various countries, as contained in the invaluable volumes of MM. Lyon-Caen and Delalain, reveals to us the fact that there is a steady tendency to lengthen this term of years, and that the more recent the legislation the more likely is the term to be long. In Austria, for instance, where the term was fixed in 1846, it is for thirty years after the author's death; while in the twin-kingdom of Hungary, where the term was fixed in 1884, it is for fifty years.

On a contrast of the terms of copyright granted by the chief nations of continental Europe with those granted by Great Britain and the United States, it will be seen that the English-speaking race, which was first to make the change from privilege to copyright and was thus the foremost in the protection of the author, now lags sadly behind. The British law declares that the term of copyright shall be for the life of the author and only seven years thereafter, or for forty-two years, whichever term last expires. The American law does not even give an author copyright for the whole of his life, if he should be so unlucky as to survive forty-two years after the publication of his earlier books; it grants copyright for twenty-eight years only, with a permission to the author himself, his widow or his children to renew for fourteen years more. This is niggardly when set

[1] Here again it may be noted that certain decisions in the United States courts, to the effect that the performance of a play is not publication, and that therefore an unpublished play is protected by the common law and not by the copyright acts, recognize the perpetual stage-right of any dramatist who will forego the doubtful profit of appearing in print.

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beside the liberality of France, to say nothing of that of Italy and Spain. Those who are unwilling to concede that the ethical development of France, Italy and Spain is more advanced than that of Great Britain and the United States, at least as far as literary property is concerned, may find some comfort in recalling the fact that the British act was passed in 1842 and the American in 1831 — and in three-score years the world moves.

There is no need to dwell on the disadvantages of the existing American law, and on the injustice which it works. It may take from an author the control of his book at the very moment when he is at the height of his fame and when the infirmities of age make the revenue from his copyrights most necessary. An example or two from contemporary American literature will serve to show the demerits of the existing law. The first part of Bancroft's *History of the United States*, the history of the colonization, was published in three successive volumes in 1834, 1837 and 1840; and although the author has since revised and amended this part of his work, it has been lawful, since 1882, for any man to take this unrevised and incorrect first edition and to reprint it, despite the protests of the author, and in competition with the improved version which contains the results of the author's increased knowledge and keener taste.

At this time of writing (1890) all books published in the United States prior to 1848 are open to any reprinter; and the reprinter has not been slow to avail himself of this permission. The children of Fenimore Cooper are alive, and so are the nieces of Washington Irving; but they derive no income from the rival reprints of the *Leatherstocking Tales* and of the *Sketch Book*, reproduced from the earliest editions without any of the authors' later emendations.[1] Though the family of Cooper and the family of Irving survive, Cooper and Irving are dead themselves and cannot protest. But there are living American authors besides Bancroft who are despoiled in like manner. Half a dozen volumes were published by Mr. Whittier and by

[1] The emendations, having been made within forty-two years, are of course still guarded by copyright.

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Dr. Holmes before 1848, and these early, immature, uncorrected verses are now reprinted and offered to the public as "Whittier's Poems" and "Holmes's Poems." Sometimes the tree of poesy flowers early and bears fruit late. So it is with Lowell, whose *Heartsease and Rue* we received with delight only a year or two ago, but whose *Legend of Brittany, Vision of Sir Launfal, Fable for Critics* and first series of *Biglow Papers* were all published forty-two years ago or more, and are therefore no longer the property of their author but have passed from his control absolutely and forever.

Besides the broadening of a capricious privilege into a legal right, and besides the lengthening of the time during which this right is enforced, a steady progress of the idea that the literary laborer is worthy of his hire is to be seen in various newer and subsidiary developments. With the evolution of copyright, the author can now reserve certain secondary rights of abridgment, of adaptation and of translation. In all the leading countries of the world the dramatist can now secure stage-right;[1] *i.e.* the sole right to authorize the performance of a play on the stage. Copyright and stage-right are wholly different; and a dramatist is entitled to both. The author of a play has made something which may be capable of a double use, and it seems proper that he should derive profit from both uses. His play may be read only and not acted, like Lord Tennyson's *Harold* and Longfellow's *Spanish Student*, in which case the copyright is more valuable than the stage-right. Or the play may be acted only, like the imported British melodramas, and of so slight a literary merit that no one would care to read it, in which case the stage-right would be more valuable than the copyright. Or the drama may be both readable and actable, like Shakspere's and Sheridan's plays, like Augier's and Labiche's, in which case the author derives a double profit, controlling the publication by copyright and controlling performance by stage-right. It was in 1791, as we have seen, that France granted

[1] Mr. Drone uses the word "playright," but this is identical in sound with "playwright," and it seems better to adopt the word "stage-right," first employed by Charles Reade

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stage-right. In England, "the first statute giving to dramatists the exclusive right of performing their plays was the 3 and 4 William IV, c. 15, passed in 1853," says Mr. Drone (page 601). In the United States stage-right was granted in 1851 to dramatists who had copyrighted their plays here.

Closely akin to the stage-right accorded to the dramatist is the sole right of dramatization accorded to the novelist. Indeed, the latter is an obvious outgrowth of the former. Until the enormous increase of the reading public in this century, consequent upon the spread of education, the novel was an inferior form to the drama and far less profitable pecuniarily. It is only within the past hundred years, — one might say, fairly enough, that it is only since the Waverley novels took the world by storm, — that the romance has claimed equality with the play. Until it did so, no novelist felt wronged when his tale was turned to account on the stage, and no novelist ever thought of claiming a sole right to the theatrical use of his own story. Lodge, the author of *Rosalynde*, would have been greatly surprised if any one had told him that Shakspere had made an improper use of his story in founding on it *As You Like It*. On the contrary, in fact, literary history would furnish many an instance to prove that the writer of fiction felt that a pleasant compliment had been paid him when his material was made over by a writer for the stage. Scott, for example, aided Terry in adapting his novels for theatrical performance; and he did this without any thought of reward. But by the time that Dickens succeeded Scott as the most popular of English novelists the sentiment was changing. In *Nicholas Nickleby* the author protested with acerbity against the hack playwrights who made haste to put a story on the stage even before its serial publication was finished. His sense of injury was sharpened by the clumsy disfiguring of his work. Perhaps the injustice was never so apparent as when a British playwright, one Fitzball, captured Fenimore Cooper's *Pilot* in 1826 and turned Long Tom Coffin into a British sailor! — an act of piracy which a recent historian of the London theatres, Mr. H. B. Baker, records with hearty approval. The possibility of an outrage like this still exists in

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England. In France, of course, the novelist has long had the exclusive right to adapt his own story to the stage; and in the United States also he has it, if he gives notice formally on every copy of the book itself that he desires to reserve to himself the right of dramatization. But England has not as yet advanced thus far; and no English author can make sure that he may not see a play ill-made out of his disfigured novel. Charles Reade protested in vain against unauthorized dramatization of his novels, and then, with characteristic inconsistency, made plays out of novels by Anthony Trollope and Mrs. Hodgson Burnett without asking their consent. But the unauthorized British adapter may not lawfully print the play he has compounded from a copyright novel, as any multiplication of copies would be an infringement of the copyright; and Mrs. Hodgson Burnett succeeded in getting an injunction against an unauthorized dramatization of *Little Lord Fauntleroy* on proof that more than one copy of the unauthorized play had been made for use in the theatre. It is likely that one of the forthcoming modifications of the British law will be the extension to the novelist of the sole right to dramatize his own novel.

II.

From a consideration of the lengthening of the term of copyright and the development of certain subsidiary rights now acquired by an author, we come to a consideration of the next step in the process of evolution. This is the extension of an author's rights beyond the boundaries of the country of which he is a citizen, so that a book formally registered in one country shall by that single act and without further formality be protected from piracy[1] throughout the world. This great and needful improvement is now in course of accomplishment; it is still far from complete; but year by year it advances farther and farther.

[1] "Piracy" is a term available for popular appeal but perhaps lacking in scientific precision. The present writer used it in a little pamphlet on "American Authors and British Pirates" rather by way of retort to English taunts. Yet the inexact use of the word indicates the tendency of public opinion.

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In the beginning the sovereign who granted a privilege or at his caprice withheld it, could not, however strong his good will, protect his subject's book beyond the borders of his realm; and even when privilege broadened into copyright, a book duly registered was protected only within the state wherein the certificate was taken out. Very soon after Venice accorded the first privilege to John of Spira, the extension of the protection to the limits of a single state only was found to be a great disadvantage. Printing was invented when central Europe was divided and subdivided into countless little states almost independent, but nominally bound together in the Holy Roman Empire. What is now the Kingdom of Italy was cut up into more than a score of separate states, each with its own laws and its own executive. What is now the German Empire was then a disconnected medley of electorates, margravates, duchies and grand-duchies, bishoprics and principalities, free towns and knight-fees, with no centre, no head and no unity of thought or of feeling or of action. The printer-publisher made an obvious effort for wider protection when he begged and obtained a privilege not only from the authorities of the state in which he was working but also from other sovereigns. Thus when the Florentine edition of the *Pandects* was issued in 1553, the publisher secured privileges in Florence first, and also in Spain, in the Two Sicilies and in France. But privileges of this sort granted to non-residents were very infrequent, and no really efficacious protection for the books printed in another state was practically attainable in this way. Such protection indeed was wholly contrary to the spirit of the times, which held that an alien had no rights. In France, for example, a ship wrecked on the coasts was seized by the feudal lord and retained as his, subject only to the salvage claim.[1] In England a wreck belonged to the King unless a living being (man, dog or cat) escaped alive from it; and this claim of the crown to all the property of the unfortunate foreign owner of the lost ship was raised as late as 1771, when Lord Mansfield decided against it. When aliens were thus rudely robbed of their tangible posses-

[1] A. C. Bernheim, History of the Law of Aliens (N.Y. 1885), p. 58.

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sions, without public protest, there was little likely to be felt any sense of wrong at the appropriation of a possession so intangible as copyright.

What was needed was, first of all, an amelioration of the feeling toward aliens as such; and second, such a federation of the petty states as would make a single copyright effective throughout a nation, and as would also make possible an international agreement for the reciprocal protection of literary property. Only within the past hundred years or so has this consolidation into compact and homogeneous nationalities taken place. In the last century, for example, Ireland had its own laws and Irish pirates reprinted at will books covered by English copyright. In the preface to *Sir Charles Grandison*, published in 1753, Richardson, novelist and printer, inveighed against the piratical customs of the Hibernian publishers. In Italy, what was published in Rome had no protection in Naples or Florence. In Germany, where Luther in his day had protested in vain against the reprinters, Goethe and Schiller were able to make but little money from their writings, as these were constantly pirated in the other German states and even imported into that in which they were protected to compete with the author's edition. In 1826, Goethe announced a complete edition of his works, and, as a special honor to the poet in his old age, "the *Bundestag* undertook to secure him from piracy in German cities."[1] With the union of Ireland and Great Britain, with the accretion about the kingdom of Sardinia of the other provinces of Italy, with the compacting of Germany under the hegemony of Prussia, this inter-provincial piracy has wholly disappeared within the limits of these national states.

The suppression of international piracy passes through three phases. First, the nation whose citizens are most often despoiled — and this nation has nearly always been France — endeavors to negotiate reciprocity treaties, by which the writers of each of the contracting countries may be enabled to take out copyrights in the other. Thus France had, prior to 1852, special treaties with Holland, Sardinia, Portugal, Hanover and Great

[1] G. H. Lewes, Life and Works of Goethe, p. 545.

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Britain. Secondly, a certain number of nations join in an international convention, extending to the citizens of all the copyright advantages that the citizens of each enjoy at home. Third, a state modifies its own local copyright law so as to remove the disability of the alien. This last step was taken by France in 1852; and in 1886, Belgium followed her example.

The French seeking equity are willing to do equity; they ask no questions as to the nationality or residence of an author who offers a book for copyright; and they do not demand reciprocity as a condition precedent. Time was when the chief complaint of French authors was against the Belgian reprinters; but the Belgians, believing that the ship of state was ill-manned when she carried pirates in her crew, first made a treaty with France and then modified their local law into conformity with the French. These two nations, one of which was long the headquarters of piracy, now stand forward most honorably as the only two which really protect the full rights of an author.

Most of the states which had special copyright treaties one with another have adhered to the convention of Berne, finally ratified in 1887. Among them are France, Belgium, Germany, Spain, Italy, Great Britain and Switzerland. The adhesion of Austro-Hungary, Holland, Norway and Sweden is likely not long to be delayed. The result of this convention is substantially to abolish the distinction between the subjects of the adhering powers and to give to the authors of each country the same faculty of copyright and of stage-right that they enjoy at home, without any annoying and expensive formalities of registration or deposit in the foreign state.

The United States of America is now the only one of the great powers of the world which absolutely refuses the protection of its laws to the books of a friendly alien.[1] From having been one of the foremost states of the world in the evolution of copyright, the United States has now become one of the most backward. Nothing could be more striking than a

[1] If a foreign dramatist chooses to keep his play in manuscript, then the American courts will defend his stage-right; but the foreign dramatist is the only alien author whose literary property is assured to him by our courts.

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contrast of the liberality with which the American law treats the foreign inventor and the niggardliness with which it treats the foreign author. In his *Popular Government* (page 247) the late Sir Henry Sumner Maine declared that "the power to grant patents by Federal authority has . . . made the American people the first in the world for the number and ingenuity of the inventions by which it has promoted the 'useful arts'; while on the other hand, the neglect to exercise this power for the advantage of foreign writers has condemned the whole American community to a literary servitude unparalleled in the history of thought."

BRANDER MATTHEWS.

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THE ECONOMIC SCHOOLS AND THE TEACHING OF POLITICAL ECONOMY IN FRANCE.

A RECENT American writer, after justly praising the marked progress of economic science in Germany, expresses himself as follows concerning France:

> France has done almost nothing for the evolution of economic science since the outbreak of the French Revolution of 1789. Political economy has in France degenerated into a mere tool of the powerful class. Nothing is so calculated to fill one with despair for France as French political economy. Rabid socialism confronts cold-blooded, selfish political economy, and where is a common standing ground? There is so little economic liberalism in no other modern nation.[1]

This is a severe judgment; and, unfortunately for us, it is not merely an individual opinion. Many economists, not only in America but also in Europe, would be likely to express the same conclusion, although possibly in a milder form. It is a commonly accepted opinion in the scientific world that the study of economics in France is decidedly on the wane; that the French genius, which formerly took the initiative in so many fields, and which even in the domain of economics paved the way for Adam Smith, has become barren; and that her most distinguished economists are something like riding-school horses, well trained, but trained to move continually in the same circle.

With two or three exceptions, French authors are seldom quoted in recent economic works. An examination of the lists of authorities now usually appended to new publications will convince us of this fact. And if by chance a French name is mentioned, it is usually not in very flattering terms. Professor Ingram, in his *History of Political Economy*, gives only a very small place to the French. As for the German

[1] Ely, Introduction to Political Economy, p. 324.

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economists, it is an accepted fact with them that the French economists are trifling and superficial, adroit in extricating themselves from tight places, but incapable of deep or original thought and unable even to understand German science.

There is indeed a certain element of injustice in this verdict, — the injustice which ever condemns the losing side. Nineteen years ago the French sustained an overwhelming defeat. The consequences have been felt not only in the field of politics but in all other domains, even in those where the fortune of war seems to play no part. The defeat of their standards and the humiliation of their soldiers were quite sufficient to impair their prestige throughout the whole world and to react on their industries, their fashions and their language. Their Lyons silk appeared less beautiful, their champagnes less sparkling, their Parisian women less pretty and their economists less learned! And let no one believe that this feeling is confined to the masses. The most distinguished intellects are unconsciously influenced by it. They also are swept along by the irresistible current. All foreigners now flock to the German universities. It is only there that they learn to know French science, which, as we can readily imagine, is not likely to be presented to them in the most favorable light. French science in Europe partly shares the fate of the French republic. It is kept in the background. As an Italian professor very wittily wrote to me lately, the "triple alliance" has been carried into the scientific world.

But making all allowance for the bias of our judges, it must be owned that their judgment contains, unfortunately, far too large an element of truth. It is only too true that for some time, and especially of late years, economic science in France has simply followed the traditions of the old school and has opened out no new vistas to the mind. It is not to be denied that in the economic movement of our day France has played by no means so brilliant a part as in philology, in mathematics, in biology or, above all, in art and letters. Not that she has failed to produce superior men, — men in our opinion equal to those of any other country, — but certain

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causes have paralyzed their genius and have prevented it from obtaining those results which a more favorable environment would have secured.

I desire here to investigate as impartially as possible the causes which have impeded the progress of economic science in France, and which have prevented her from occupying a position as prominent as she could rightfully have claimed. This investigation will perhaps be not without benefit to the American public, who, while there is yet time, may learn from our example what dangers to avoid.

I.

I have just remarked that if the results achieved by French economics have not been what we might expect, it is not for want of men. Let me begin by recalling some of the less familiar names. It is now generally acknowledged that the Physiocrats — or rather, as they were then already called, the Economists — were the real founders of political economy. The time-honored title of father of political economy, conferred upon Adam Smith, is a marked injustice to that phalanx of eminent men, Quesnay, Dupont de Nemours, Mercier de la Rivière, the abbé Baudeau, Letrosne, Turgot, Condorcet, the marquis de Mirabeau. In no other country and at no other epoch has so brilliant a school sprung so suddenly into being, and never perhaps has the science excited an enthusiasm so general and so ardent. The somewhat scornful indifference with which the works of the Physiocrats have been treated, and for which France herself is chiefly to be blamed, will some day be regarded as one of the most striking examples of ingratitude that history offers. Adam Smith himself fully acknowledges his indebtedness to them. It is even said that he would have dedicated his work to Quesnay, if the latter had still been living. Dr. Quesnay's first economic treatise was published in 1756, that is to say, twenty years before the appearance of Adam Smith's great work. This is not the place to analyze or to criticize the theories of the

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Physiocrats. I desire only to point out, that although we may tax them with many errors, excusable in beginners, we certainly cannot charge them with want of originality. To cite but one example: the famous system of Henry George which has caused such commotion was taught word for word by the Physiocrats. Henry George acknowledges this himself, although he asserts that he is only indirectly acquainted with their works. "The French economists of the last century," he says, "headed by Quesnay and Turgot, proposed just what I have proposed, that all taxation should be abolished, save a tax upon the value of land."[1]

But we must not believe that the science of economics in France has spoken its first and last word through the Physiocrats, or that it has remained silent for a whole century. It has had since then illustrious exponents of world-wide reputation. It has had other exponents of no less, perhaps even of greater eminence, of whom no one speaks. It is unneces-

[1] Progress and Poverty, book viii, chap. iv. As Mr. George declares that he knows the Physiocrats only at second-hand, and as the same is probably true of many American readers, I reproduce here by way of curiosity one of the passages in which we may find Henry George's doctrine most clearly expounded. The passage is from Mercier de la Rivière's work on The Natural Order of Political Society: "This order may be summed up in two fundamental rules: first, that taxation should not be arbitrary; second, that it should be nothing but the result of the co-ownership of the sovereign in the net produce of the land within its domain. . . . Thus the essential form of the tax consists in taking the tax directly where it is, and in not wishing to take it where it is not. According to what I have stated in preceding chapters, it is evident that the fund out of which the tax is paid cannot be found in the hands of the landowners, or rather of the farmers who in this respect represent them. For they receive this fund from the land itself, and when they turn it over to the sovereign they do not give anything which really belongs to them. It is therefore from them that the tax must be demanded in order that it may not be a burden on any one." ("Cet ordre se trouve tout entier renfermé dans deux règles fondamentales: la première, que l'impôt n'ait rien d'arbitraire; la seconde, *qu'il ne soit que le résultat de la copropriété acquise au souverain dans les produits nets des terres de sa domination.* . . . Ainsi la forme essentielle de l'impôt consiste à prendre directement l'impôt où il est et à ne pas vouloir le prendre où il n'est pas. D'après ce que j'ai dit dans les chapitres précédents, il est évident que les fonds qui appartiennent à l'impôt ne peuvent se trouver que dans les mains des propriétaires fonciers ou plutôt des cultivateurs ou fermiers qui, à cet égard, les représentent; ceux-ci reçoivent ces fonds *de la terre même et lorsqu'ils les rendent au souverain, ils ne donnent rien de ce qui leur appartient: c'est donc à eux qu'il faut demander l'impôt pour qu'il ne soit à la charge de personne.*")

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sary to mention the name of J. B. Say, who, in a treatise which has been translated into all languages, first sketched the complete plan of the classic text book of political economy, with its four divisions and its symmetrical arrangement; a plan which has been followed without much change by all writers of text books to the present day. Nor is it necessary to mention the name of Bastiat, the very incarnation of optimistic economics, who displayed in his work an eloquence and an ardor unparalleled in the literature of the science. Nor shall I mention others, *dii minores*, such as Dunoyer, who developed the idea, at that time new, of including among economic goods or wealth immaterial products and services; nor Michel Chevalier, who was one of the first to turn to the economic development of the United States for ideas and illustrations.

But all these economists belong to the classical school — to the school which has exclusively controlled and which to-day still dominates the thought of France. I would say a word of some other dissenting economists who, precisely because of their dissent and of certain reasons that I shall mention later, remained unknown to fame and received a tardy recognition only when at last discovered by foreigners.

The first of these was Condillac, — like Adam Smith a philosopher and an economist, but who, in contradistinction to Smith, was well known as a philosopher and almost unknown as an economist. Nevertheless he published in 1776, simultaneously with the appearance of Smith's famous *Inquiry*, the *Treatise on Commerce and Government*, a work which abounds in profound thoughts, and in which the very recent theory of value, that of relative or final utility, was already clearly demonstrated. Condillac not only shows that the value of commodities depends on their utility, but he proves in addition that this utility is necessarily a function of their quantity.[1] Without doing injustice to the illustri-

[1] As Condillac's work is probably read by Americans even less frequently than are those of the Physiocrats, it will perhaps be of service to quote a few sentences from his theory of value: "Since value is based on wants, it is natural that the

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ous Glasgow professor, we may confess that we should look in vain for a similar analysis of value in his *Inquiry*. To be more successful in our search we must skip an entire century until we reach Stanley Jevons, who expresses himself in almost precisely the same words as those of Condillac, quoted in the note, and who moreover gives due credit to his predecessor. Condillac was not exactly a heretic. In his time there were scarcely any separate schools. But he was already a dissenter from the dominant school of the Physiocrats; and this sufficed to condemn his work and to enable J. B. Say to pass the following summary judgment on it: "Condillac sought to establish a particular system regarding a subject which he did not understand, but there are some good ideas to be found in the midst of this chatter." [1]

The second of these forgotten economists was Dupuit, an engineer. He published in 1846 and 1849, in a periodical well known even outside of France to engineers, but little read by economists, the *Annales des Ponts et Chaussées*, two purely technical articles on transportation. In these articles, in the

more urgent the want, the greater the value of the commodity, and the less urgent the want, the smaller the value of the commodity. Value hence increases with the scarcity of commodities and decreases with their abundance. It may even decrease to such an extent as to disappear entirely . . . for value depends less on the thing itself than on our estimate of it, and this estimate again is in exact ratio to our wants. It rises and falls as our wants themselves increase and diminish. . . . It is not true that in an exchange equal value is given for equal value. On the contrary, each contracting party always gives a smaller value for a greater. Why? Because, since commodities only have a value relative to our wants, what is valuable to one is less so to the other and *vice versa*." ("Puisque la valeur des choses est fondée sur le besoin, il est naturel qu'un besoin plus senti donne aux choses une plus grande valeur et qu'un besoin moins senti leur en donne une moindre. La valeur des choses croit donc dans la rareté et diminue dans l'abondance. Elle peut même dans l'abondance diminuer au point de devenir nulle. . . . Car la valeur est moins dans la chose que dans l'estime que nous en faisons, et cette estime est relative à notre besoin: elle croit et diminue comme notre besoin croit et diminue lui-même." Traité sur le Commerce et le Gouvernement, chap. 1. "Il est faux que dans les échanges on donne valeur égale pour valeur égale. Au contraire, chacun des contractants en donne toujours une moindre pour une plus grande. Pourquoi? C'est que la chose n'ayant qu'une valeur relative à nos besoins, ce qui est plus pour l'un est moins pour l'autre et réciproquement." *Ibid.* chap. 5.)

[1] "Condillac a cherché à se faire un systeme particulier sur une chose qu'il n'entendait point, mais il y a quelques bonnes idées a recueillir dans ce babil."

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course of a general discussion on the usefulness of public works, he enters into a remarkable argument of far-reaching importance on utility and value. Under the name of relative utility, he advances a theory of value similar to that already outlined by Condillac, but strengthened by the application of mathematics, — the very theory, in fact, of which in our days Jevons, Walras and Menger all claim to be the discoverers. We have therefore every reason to assert that this great theory, which now seems to have become an integral part of economic science, is really of French origin.

The third, and the one most worthy of fame, although he had barely caught a glimpse of it when death overtook him, was Cournot. He also was at the same time a philosopher and an economist — an economist recognized to-day by the common consent of all those who apply mathematics to political economy as the founder of their method. In a short treatise published in 1838 under the title, *Recherches sur les Principes Mathématiques de la Théorie des Richesses*, Cournot applies integral calculus to the study of the problems of value, as subject alternately to the law of monopoly and to that of competition ; and all this with a power of analysis which unfortunately lies far beyond the mental grasp of the masses, but which has excited the highest admiration amongst those capable of understanding it. Stanley Jevons calls it "wonderful," and Edgeworth terms it "masterly." He was one of the first to show the shortcomings of the law of supply and demand as the explanation of value, and also the weakness of the arguments advanced in favor of free trade.

Cournot's work nevertheless remained buried in the gloom of utter indifference, and I do not know that a single copy was ever sold. But twenty years later, attributing his defeat to the dryness of his algebraic formulas, Cournot published another work, in which he reproduced about the same ideas, but divested them of all mathematical forms. Finally, in 1877, he attempted for the third time to imbue the public with his ideas, in a still more elementary form, and prefaced his work with the following melancholy words : "If again I lose my suit, I shall have left

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only the consolation that seldom forsakes the unfortunate — that of believing that the decision rendered against them will one day be set aside in the interest of the law, that is, of truth."[1] And indeed he lost his suit again. He died soon after, just as the attention of foreigners, at length attracted to his work, was about to "order a new trial" and to recompense him for the indifference of his fellow-citizens. I do not believe that a single journal or review gave him an obituary notice. The *Dictionnaire d'Économie Politique*, published in 1856, does not even mention his name; and yet it gives the biographies, or at least the names, of more than thirteen hundred economists, or authors who have written on political economy![2]

If I have entered with some detail into the account of Cournot, it is because it throws so clear a light on the peculiar condition of economic science in France. It is clear that circumstances must have been very unfavorable to the growth and development of new ideas, when a man of Cournot's genius, who in any other country would have been an accepted leader, did not succeed in finding a single disciple.

If now we bear in mind that, besides those who in the strict sense of the word were economists, Auguste Comte, the illustrious founder of sociology, was a Frenchman; and that of the four great socialists of the first half of the century, Fourier, Owen, St. Simon and Proudhon, three were French, — we shall soon convince ourselves that in the social sciences as elsewhere, France has at no period been wanting in vigorous thinkers, and even in men well fitted to be leaders. Even at the present day, if we count only the living, France may boast of an array of economists as numerous and as brilliant as those of any other country. I may cite the names of MM. Paul Leroy-Beaulieu, de Molinari, Courcelle-Seneuil, Levasseur, Léon Say, Baudrillart, Frédéric Passy and Maurice Block. I may cite others less well

[1] "Si je perds encore une fois mon procès, il ne me restera que la consolation qui n'abandonne guère les disgraciés: celle de penser que l'arrêt qui les condamne sera un jour cassé dans l'interêt de la loi, c'est-a-dire de la vérité." Revue Sommaire des Doctrines Économiques.

[2] As for Dupuit, the Dictionnaire mentions his name and the title of his two essays, nothing more. To Condillac the Dictionnaire devotes a somewhat lengthier

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known but equally worthy of fame; as, for example, M. de Foville, who has treated statistical subjects with remarkable clearness and intelligence; M. Juglar, who has made a specialty of predicting economic crises; M. Pigeonneau, the author of a very remarkable history of French commerce; M. Claudio Jannet, who has written, among other works, one on the United States of to-day, which has gone through numerous editions; M. Cheysson, one of the organizers of the section of social economy which met with such well-earned success at the Exhibition of 1889. Besides these, there are in the universities, in the socialistic school and in the Catholic school, others whom I do not name for fear of indefinitely extending my list. All or nearly all are distinguished writers, and some are eloquent orators. If it be true that their works are distinguished by the peculiarly French qualities of clearness, precision and good sense, rather than by depth of thought, still we shall not find them wanting in patient research and broad views.

Thus we find ourselves brought back, but with increasing perplexity, to the question which was propounded at the outset. If France always had, and still has distinguished economists, why does she not occupy a place worthy of herself in the economic movement of to-day? Why, when we hear everywhere of the "German school" and of the "English school," — and, of late, even of the "Austrian school" and of the "American school," — is the "French school" never mentioned?

II.

There certainly is a school in France. But by what name shall we call it? The classical or orthodox school? Not exactly; for if it has preserved the method and the framework of the classical school, it has rejected any number of its theories, even the most important ones, such as the Ricardian

article, gives him an honorable rank "among the popularizers" (these are the actual words), and blames him only for some errors on the subject of value, especially "for having caused serious confusion between value and utility."

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theory of rent, the wage-fund doctrine and, in many cases, also the law of Malthus. M. Leroy-Beaulieu, in the preface to his *Essai sur la Répartition des Richesses*, goes so far as to maintain that the whole classical theory of distribution must be reconstructed.

The liberal school? In one sense, yes, because it always adopts for its motto *laisser faire, laisser passer*. But certainly it is not liberal, if we take that sense of the word which suggests broad ideas and tolerance of contrary opinions; for in this respect no school has shown itself more illiberal, more narrow, more rigidly sectarian. What Dr. Ely has said is entirely true: "There is so little liberalism in no other modern nation."

The deductive school? This term would not be appropriate; for many of its most distinguished exponents are statisticians rather than economists, relying on facts alone and priding themselves on being practical men. If only they had shown some little inclination toward general propositions and the deductive method, we should not blame them. We feel much more tempted to blame them for not having given even a modest place to the deductive method *par excellence* — that method which had begun to take such firm root in France, but which was to be transplanted to foreign countries, — the mathematical method.

Its proper name is the optimistic school. The assumption that, if the actual condition of things is not very good, it is at least the best possible; the fixed determination to seek a justification for the economic organization as it exists in all its main lines, such as private property in land, freedom of industry, competition, the wages system; the resolve to oppose all efforts which look to a serious modification of these institutions, — such are the chief characteristics of the school. M. Leroy-Beaulieu, after half a century, simply follows in the footsteps of Bastiat, although he has repudiated the latter's doctrines. The words are different, but the tune is the same. The one, in his *Harmonies Économiques*, sets himself the task of proving that all existing inequalities in property may be traced back, and are directly proportionate, to differences in individual labor;

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and that these inequalities, after all, are insignificant beside the benefits which nature lavishes freely and equally upon all. The other, in his *Essai sur la Répartition des Richesses*, which has just been mentioned, develops the thesis that the existing inequalities among men are much less than they seem, and that their tendency is to disappear gradually through the mere working of natural laws and of free competition, — an assertion which, I fear, the economic evolution of the United States is far from confirming. If this school rejects certain laws which the orthodox writers consider fundamental, — such as that of Ricardo, that of Malthus or the wage-fund theory, — it is precisely because these laws have a pessimistic character, because they do not present the existing state of society or its future prospects in a favorable light. If, on the contrary, certain other classical doctrines, such as the fall in the rate of interest,[1] are warmly defended by the French school, it is because these laws present human affairs in a more hopeful light.

It is natural that this school, convinced of the excellence and the permanence of the present economic order, should oppose as useless and harmful all attempts to change it in any of its essential characteristics; not only when the change is sought through state interference, as by regulating labor, establishing protectionist duties or fixing the price of bread or meat, but also where changes are attempted through private initiative, where the appeal is to freedom, and where a school that professes to be liberal might well be expected to show sympathy. The attitude of the French school on these questions proves it to be more optimistic than liberal. Its members are almost unanimous, for example, in opposing and deriding co-operation, as soon as it aims at productive association and the elimination of the employer. They accept co-operation only in so far as it confines itself to reducing the expenses of the workmen and securing them pensions in case of need.

But why has the dominant school in France encased itself in such complacent optimism? It is certainly not owing to

[1] M. Leroy-Beaulieu makes this doctrine the basis of his argument that the inequality of human conditions is tending to decrease.

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hardness of heart or cold egotism, as Dr. Ely erroneously believes. Bastiat was one of the most generous of men, and I do not think that any one of our contemporary economists is insensible to the sufferings of his fellow-beings. Perhaps their attitude may be explained, in part at least, by a feeling very common among the ruling classes in France — by the desire to avoid all the burning questions of economics, all the questions whose discussion might awaken in the minds of the people too great and too dangerous hopes. Their watchword is: "Add no fuel to the flames." In a country like ours, where successive revolutions have weakened all the springs of the political machine, but until now have left the wheels of the economic organization intact, we feel the more keenly the necessity of clinging to all those institutions which we regard as the bases of the actual social order, and which we fondly believe to be indestructible. A further explanation may perhaps be found in a certain lack of philosophic and scientific education, natural among men who for the most part are not mere closet philosophers, but men of action, and who are therefore ill-prepared to accept the scientific method of the day, that of evolution. Accustomed, like the old economic school, to study economic phenomena from a static point of view, they do not easily accept the idea that, from now on, not only social phenomena, but all kinds of phenomena, must be studied, to borrow the terms of Auguste Comte, not from the static but from the dynamic point of view; not only in their relations of co-existence, but in their order of succession; not simply in a state of permanence, which is visionary, but in a perpetual becoming, which is real.

However, there is no reason to lament over the fact that France has had a conservative and optimistic school. Such a school has its distinct place in all countries. But what we must deplore is that this school has become so completely dominant as to have overshadowed all others and stifled all new and promising germs of thought. This is the most interesting point in the present discussion, and one which cannot be understood without special explanation. If it were simply a question of accounting for the absence of the new historical school, my task

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would be an easy one. The explanation would readily be found, either in a natural reaction against a school of German origin which has attained its highest development since the war of 1870, or in the peculiar temperament of the French people, which, because prone to general propositions and eager to arrive at exact conclusions, is averse to the method of the historical school. For this method requires patience, research and cautious experiment, and purposely abstains from all foregone conclusions and hasty generalizations. We can therefore readily understand why neither Brentano nor Schmoller succeeded in founding a school in France. But the facts noted do not explain why neither professorial socialism, nor Christian socialism, nor the sociological school, nor even the mathematical school, which through its character and origin seemed particularly adapted to the French genius, — why, in one word, no other school but the one we have described has been able to take root in French soil. Nor do they explain why, in place of the happy and fruitful competition which has been introduced in all other countries to the manifest advantage of science, we find in France a régime of monopoly for the benefit of the very school which condemns monopoly.

The reasons, I think, are as follows.

In the first place, political economy had, until recently, no place in the French system of university instruction. I mean that there was no course of instruction in political economy, holding a distinct place in the curriculum of higher education side by side with other sciences, and entrusted to a distinct body of professors. It is well known that our universities are very differently organized from those of other countries. Entirely reconstructed by Napoleon I, with that love of uniformity and of symmetry which characterizes the French genius and which characterized his in particular, the universities of today in the twelve or fifteen principal cities of France are composed of four faculties, law, medicine, science and letters, each with a number of chairs fixed by law and corresponding to the number of subjects officially selected for the examinations. Such at least was the case until the recent reforms, which intro-

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duced the system of *chargés de cours* — a system somewhat analogous to that of the *privat-docenten* in Germany. The consequence was that none of the new sciences — nor any of the older sciences, even, which were not already included in these securely barred departments of law, medicine, natural science and letters — could gain the right of domicile in the university. There was no place for them. Such was the case with archæology, anthropology, pedagogy, statistics, the science of finance and, in particular, political economy.

Only very recently has it become possible to crowd these different courses into corners into which they do not fit, by adding each of them to the faculty with which it has most in common. Not until 1878 was political economy joined to the faculty of law, and we shall see that precisely this step marked a new era. Until then political economy had been taught only in a few chairs outside of the university — chairs which may be considered purely ornamental.. Of such character is the chair of the *Collège de France*,[1] rendered famous formerly by J. B. Say, Rossi and Michel Chevalier, and to-day by M. Paul Leroy-Beaulieu — a chair which never educated disciples, nor even attracted regular students. It is a public course of lectures, where strangers in Paris come to listen as they would pass an afternoon at the Louvre or an evening at the Comédie Française, but whose regular attendants are a few young women who wish to add the finishing touches to their education, and some poor devils who come in winter to keep warm and in summer to keep cool, and at all times to sleep. Besides this, we find chairs of political economy in certain technical schools like the *École des Mines*, the *École des Ponts et Chaussées*, the *École des Arts et des Métiers*, the *École des Hautes Études Commerciales*, where the instruction in economics has a purely practical character, and is little attended by the pupils because it occupies a very unimportant place in the examinations. The chair of political economy in the *École libre des Sciences Politiques* is more important,

[1] The Collège de France, founded by Francis I, does not constitute, properly speaking, a part of the university, since it has no regular students, holds no examinations and confers no degrees.

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but it was founded only in 1872. These different chairs have been confided to very able men, who were already well known through their writings but who had never belonged to the university, and to whom a professorship always remained a thing of minor importance, something like a benefice, a title both lucrative and honorary, bestowed on the few lucky ones in favor at court.

Now I consider it a necessary condition of the development of any science, that the instruction should come from a university, and that it should be given by a body of professors especially devoted to the work, to the exclusion of all technical or professional aims. My reasons are as follows. The man who devotes himself to political economy, for example, as a writer or a publicist is concerned only in having his books or articles read. He tries to gain the public ear. In order to do this he follows the stream and adopts the doctrines generally accepted. The professor, on the contrary, is not obliged to seek a public. He has it always with him in the students who attend his lectures or read his books. His ambition — at least the ambition of all professors worthy of the name — is to strike out into new paths on which a few disciples may follow. To be original is thus his great aim; not to follow the crowd, but on the contrary to discover something which none of his colleagues has hit upon before. Doubtless this mental attitude gives rise to many petty rivalries, many puerile quarrels of precedence. But taking all things into consideration, it may be said that this rivalry between professors of the same country or even of different countries, all united by the fraternity of interests which naturally binds men devoted to the same pursuits, and yet separated by desire for individual distinction, is wonderfully favorable to scientific progress. It is precisely this stimulus which has been lacking in France until this day. Moreover, nothing is so conducive to the mental training of the student, or so favorable to the formation of a new school by the teacher, as oral instruction. The Greeks, certainly good judges in matters of education, always made use of it. The best known French economists were and are to-day statesmen, financiers, journalists, politicians,

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philanthropists. They are not professors, or they are only secondarily professors; and it is precisely because they are not scholastic that they cannot create a school. Had Cournot been a professor in a university, he probably would have founded a school; at any rate, he would not have waited forty years to become known.

The second cause to which I shall call attention is the existence of the Institute — *l'Institut de France.* Foreigners cannot realize the invisible and all-powerful influence that this body exercises. Could they grasp it, it would serve them as the key to many of the mysteries of our literary and scientific life. It is well known abroad how great is the prestige of the French Academy, to which the most revolutionary and uncompromising writers, like Zola, finally bow and humbly beg for admission. But the Academy is only a part of the great body known as the Institute. The latter includes, besides the Academy, five sections: *les Sciences Morales et Politiques, les Inscriptions et Belles Lettres, les Sciences, les Beaux Arts* and *la Médecine* — covering, as we see, the whole field of human knowledge, and exercising to the remotest limits of this vast domain a positively baneful attraction. Not that the Institute is of little worth; it is far from my desire to detract from it. Doubtless it includes some mediocre members; but they form the exception. Doubtless also there have always been outside of its pale many men of genius; but that also is exceptional. After all, it can rightfully claim to have represented for the past three centuries the intellectual élite of France, and I think that no learned association in any other country has such a golden book. But just here lies the trouble. Precisely because it is composed of eminent men, it wields a wide and unfortunate influence. Were it composed of fools, it could do no harm.

Let us see how this influence is exerted. Let us consider only the field of political economy; first, because it is with this field that we are at present concerned, and also because it is here that the influence of which I speak is most strongly felt. Let us take a young man who wishes to pursue the study

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of political economy. Naturally he tries to gain some reputation. He consults a placard posted in most of the public institutions, which contains a list of subjects for competition at the Institute. This list, renewed annually or, for certain prizes, every two or three years only, is very long. In fact, the Institute is exceedingly rich, and controls several million francs of income dedicated solely to these prizes. It must be said, parenthetically, that the French, unlike the Americans, do not care to bequeath money to institutions of public instruction or public utility. But they make an exception in favor of the Institute, towards which they show themselves very liberal and generous. The reason is, perhaps, that each prize bears the name of the donor, thus procuring him a certain kind of immortality. The section of the moral and political sciences alone distributes annually about 60,000 francs, divided into thirty prizes varying from 1000 to 12,000 francs each. But to return to our young economist. He glances over this long list and makes his choice, knowing beforehand who will be his judges. These, the members of the section of political economy, eight in number, all belong, without exception, to the school of which we have spoken above. The contestant knows beforehand that, whatever the merit of his work, it will not secure the prize unless it agrees with what are called sound economic doctrines; that is, unless it accepts and even defends private property, capital, the wage system, freedom of industry, free trade *etc.* The Institute does not desire—and we can well understand this attitude by putting ourselves in its place—to commit itself to doctrines which it deems dangerous to the public order by stamping them with its official approval and thus recommending them to the world. It proposes to reward only those works "which will do good." Our young candidate goes to work with a full comprehension of these facts. He devotes himself conscientiously to the works published by the members of the Institute who are to sit in judgment on the topic which he has selected. He attempts to treat it in such a manner as not to offend them. Whatever originality he may possess, he employs in seeking new arguments favor-

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able to the traditional doctrines. After revising this memoir, he sends it to the Institute, where he stands a good chance of being rewarded. As the subjects are very numerous (thirty, as I have said), there are not many competitors for each prize; generally only two or three; a few more if the prize is one of the more important. Besides, the Institute in a spirit of kindness often divides the prizes among the competitors. (Formerly, it is true, the award was postponed to another year, if the articles submitted seemed unworthy.) Let us take it for granted that the article has received the prize. It is then immediately published, with this notice printed on the cover: "Crowned by the Institute"; and the fortunate candidate bears forever after the title, *Lauréat de l'Institut.*

The year following, encouraged by his first success, he returns to the attack. There are professors who thus win prizes five or six years in succession; which, besides the honor conferred, represent a not inconsiderable increase in the income of a young man struggling to make his way.

From this time forward our young economist does not change his opinions. He retains throughout his life the impressions received in his youth. The switchmen of the Institute have placed him on the track, and he keeps the rails to the end of the journey. Once well on in years, he ceases to compete for prizes. But then his ambition changes its form without changing its character. He aspires now to become a member of the Institute. To attain this end, he has one more step to take. He asks permission to make "communications" to the Institute. That is to say, on the day of the meeting he arrives with a manuscript under his arm, which he obtains permission to read aloud. Of course he endeavors to treat his subject in such a way as to arouse, not applause, for the illustrious assembly never applauds, but at least a "murmur of approbation" or even "some visible marks of satisfaction." This places our economist in personal relations with the members of the Institute, his judges of to-day, his electors of to-morrow. He may present himself at the

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next vacancy, that is at the death of one of the Immortals.[1] The first time he may have only one or two votes. He awaits a second vacancy and will then see the number of votes increase to six or seven. Patiently he waits for a third vacancy, and if he does not die in the interval he will be elected. Thus will he have achieved the supreme aim of his life, that to which he looked forward from his earliest days. *Hoc erat in votis.* Now he can die content.

But all do not attain their aim. Many die, like Moses, after only looking at the promised land from afar, not having been permitted to enter it. But even if all cannot enter, all turn their gaze towards it. Whosoever devotes himself to literary pursuits in France fixes his eyes from the very beginning of his career and through all the stages of his life upon the cupola of the Institute, as does the true Mussulman on the Kaabah of Mecca. When young, it is there he looks for instruction; arrived at maturity, it is there he seeks fame; and in his old age, it is there that he awaits his highest rewards.

I was accordingly justified in speaking of the attraction exercised by this great body. Everything in fact, revolves about it. From it come light and heat — I mean scientific renown and high official position — for all the satellites that encircle it. If I may be permitted to continue the metaphor, I would say that if by chance some insubordinate planet were to set itself free from this centre of attraction, it would be condemned to darkness, like those outsiders in our solar system called comets, who wander from the sun only to be buried in eternal night. This was the history of Dupuit and of Cournot, who never were members of the Institute or even laureates; and this is doubtless the history of others who have not even succeeded in handing down their names to us. M. Walras, professor at Lausanne, who is now one of the leaders of the mathematical school, is a Frenchman by birth and began his career in France. But he was obliged to seek a foreign home at the little university of Lausanne, in surroundings more favorable to his teachings. I

[1] In strict usage, of course, the title of Immortal is reserved to the members of the Académie Française.

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do not mean to say that any one of the men whom I have mentioned has been the object of a systematic hostility — not at all. They never were persecuted, — one can arm oneself against persecutors, — they were simply ignored, which is worse.

The school of the Institute, moreover, possesses certain annexes that greatly increase its influence. I shall mention three which are closely connected with it: the Political Economy Club (*la Société d'Économie Politique*), the *Journal des Économistes*, and the publishing house of Guillaumin.

The *Société d'Economie Politique* was founded in 1842. It meets once a month at a banquet, and during dessert some question in political economy is discussed. It is composed of two hundred and fifty elected members, economists and publicists, almost all of whom belong to the liberal school. At all events, these are the only ones who take part in the debates. The result is an exaggerated harmony which renders these discussions very monotonous. There is, however, one opponent, a single one, an old Fourierist, M. Limousin, who is warmly received because he brings the little grain of pepper that relieves the dulness of this economic feast.

The *Journal des Économistes* with its yellow cover is well known. Founded in 1841, this review is the venerable dean of all the journals of political economy that are published throughout the world. (The Tübinger review dates from 1844 only.) Until fifteen years ago, this was the only review of political economy in France, and to-day, we believe, it has still the greatest number of readers, or at least subscribers, which is not quite the same thing. It enjoys the respect due to its years and to its constant fidelity to liberal traditions. It looks down, with the pride of fallen aristocracy, on all the young and noisy schools that are beginning to raise a commotion around it. For the most part it ignores their existence, and a close perusal of its numbers would lead one to believe that for fifty years nothing has changed in the world.[1]

[1] The *Économiste Français*, of much more recent birth, is the journal of M. Leroy-Beaulieu. It devotes itself to practical questions, like the London *Economist*, but it is edited in the same spirit as the *Journal des Économistes*, or in a spirit even narrower.

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The *Librairie Guillaumin* is not merely a publishing firm. It occupies an important place in the history of economic doctrines in France, and forms by no means the least curious part of this history. It has made a specialty of publishing economic works, and under an able management has gradually become a veritable monopoly. Books, collections, dictionaries have left its presses by the thousands during the past half century, and have diffused its wholesome orthodox doctrines, not alone throughout France, but through those foreign countries which pay more or less attention to our literature. Not that it does not occasionally issue heretical works when it finds its interest in so doing; for instance, it published lately a translation of Henry George's *Progress and Poverty;* but this is the exception. Its *Bibliothèque des Sciences Morales et Politiques* is far from showing in this respect such scientific impartiality or such breadth of treatment as the fine Italian collection known as the *Biblioteca della Economista.* With the exception of Thünen and Roscher, not a single German economist is represented in the French collection, and even Stanley Jevons is not to be found there. For years the *Librairie* has been presided over by two amiable spinsters, two sisters (only one survives at present), and its money affairs are managed by the chief personages of the liberal school as silent partners. While defending good doctrines, it does good business—a rare coincidence in this world. This little floor in the Rue Richelieu forms a curious nook in Paris, serving at the same time as the publisher's shop, as the editorial rooms of the *Journal des Économistes,* as the secretary's office of the *Société d'Économie Politique,* and as a place of *rendezvous* for foreign economists on their way through Paris. It is also a nursery for young economists, who are trained there for editors, followers of correct principles, all destined to become one day laureates of the Institute, perhaps even academicians.

If now the reader will kindly observe that the same persons are at once members of the Institute, partners of the house of Guillaumin, editors of the *Journal des Économistes,* presidents or vice-presidents of the *Société d'Économie Politique,*

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they will readily solve for themselves the problem which was stated a short time ago: Why has there been but one school in France during the last half century? The reason is, that there was no possible place for any other. Shut up in the Institute as in a citadel, protected by the three institutions just spoken of as by so many outworks, the liberal school held all the roads leading to honor, to official position and even to the attention of the public. It could readily believe and make the people believe that it represented the true science, the whole science and the only science, and that its future was inseparably connected with the future of political economy. Like the Physiocrats of old, its followers called themselves "the economists," and in the meetings of the Political Economy Club such questions as this were gravely discussed: "Can one be an economist and a protectionist at the same time?" or again: "Can one be a socialist and call himself an economist?"

Such a condition of things could not last forever without causing the death of all economic science in France, and even the death of the dominant school itself. This school in fact suffered from the absence of all competitors and experienced in itself, although without knowing it, a law which it understood so well how to demonstrate in its teachings, namely, that all continued monopoly is in the long run injurious to the monopolists themselves. Little by little it lost its sap and its fertility. Constantly recruiting itself from the same set, and, so to say, from the same families, it could not infuse into itself any fresh blood. I once heard, from one of the most eminent representatives of the classical school, this sad avowal, in which there was more truth than vanity: "After us, they will find no one for the Institute." In fact, the rising generation of economists of the classical school appear, as far as we can judge, to be by no means the intellectual compeers of the present generation.

It might have been feared that the classical school, after exhausting the soil in its vicinity, would finally disappear leaving nothing behind it; like those gigantic trees which, during a long life, blight with their shade the undergrowth, and when

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at last they fall, leave on the ground about them an empty, barren circle.

Fortunately for the future of economic science in France, a reaction was setting in, which was destined to change the position of affairs. In order to complete this essay, I have only to explain this movement.

III.

The first movement of reaction against the liberal school dates back about thirty years. It was initiated by M. Le Play in the publication of his *Ouvriers Européens* in 1855, and by the founding of the *Société d'Économie Sociale* in 1856. M. Le Play, a mining engineer, after thirty years of travel devoted at first to technological studies and later to social researches, founded the school which still bears his name and which marked the first breath of dissent.

This school did not at the outset assume an attitude hostile to the classical school. The *Ouvriers Européens* was even crowned by the Institute, and since then the two schools have been on good terms. Like the liberals, the school of Le Play opposes state intervention, defends the principles of order and ownership and maintains the wages system, corrected only by the recognition of corresponding duties on the part of the employer. Nevertheless, since its origin, it has been separated from the liberal school upon several points of vital importance. In the first place it is not optimistic. It does not believe that the economic organization of modern society is good. It utterly disbelieves that the individual, left to himself, always finds out what is most conducive to the welfare of all or even to his own welfare. Starting with the Christian doctrine of the fall of man, it has no confidence in man's natural instincts, and it expects him to be kept in the right path, if not by the state, at least by the family, by the ruling classes or by religion. It endeavors then to re-establish all these authorities, that of father of the family, that of the employer (*le patron*) and that of the church. Thus it sets its face in quite a different direc-

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tion from the liberal school, manifesting a marked Catholic and politico-conservative spirit, whilst utterly disclaiming it.

Besides, its object is not so much political economy as social science; that is, it considers it indispensable not to separate the questions of wealth from those of morals, of legislation and of government. It aims less at the greatest possible production of wealth than at the spread of what it calls by the fine name of "social peace." Finally, it rejects the deductive method and claims to rely only on the observation of facts. It practices this method of induction in a very picturesque manner, quite its own and invented by Le Play, *viz.*, monographs of workmen's families. More than a hundred of these monographs, drawn from all countries, have already been published under the title of *Ouvriers Européens* and *Ouvriers des Deux Mondes*, — and the publication is to be indefinitely continued.

Besides these different works, already very numerous and constituting by themselves a special library, the school of Le Play publishes two reviews. One is the *Réforme Sociale*, dealing especially with all those questions of economic legislation and of history which relate to the condition of the working classes, to the state of landed property, to the system of inheritance, *etc.* The other is the *Science Sociale*, less known than the preceding, which endeavors to formulate the social laws, and contains some suggestive (although a little too systematic) *aperçus*, particularly in relation to the influence of environment and geographical conditions on the formation of different societies. Besides the *Société d'Économie Sociale*, which meets in Paris and whose discussions are generally much more interesting than those of the *Société d'Économie Politique* spoken of above, the school has branches which spread all over France under the name of *Unions de la Paix Sociale*, and recruit themselves chiefly from amongst the Catholic party.

But the spirit of dissent which, in Le Play's school, never led to a complete schism from the orthodox school, was not slow in assuming a more distinctly aggressive character. A new school, more Catholic or rather more ultramontane than Le Play's, hoisted the banner of Christian socialism and entered

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boldly upon a campaign against the liberal school. It pronounces the liberal school execrable, and condemns it as responsible for all the ills from which modern society suffers. It proclaims as the sole means of salvation a return to corporate organization in the economic world and a return to provincial organization in the political world. It insists, with Cardinal Manning, upon state intervention for the protection of the working classes. Its anathemas and its demands have found an eloquent interpreter in the Count de Mun, whose votes in the Chamber of Deputies have more than once been cast in the same box with those of the socialist members. For a dozen years it has maintained a review, the *Association Catholique;* and almost everywhere in France it has organized societies, under the name of *Cercles Ouvriers*, which bear a character rather political and religious than social, and which withal do not extend very rapidly.

The socialist school had undergone a long eclipse after the revolution of 1848, and was even supposed to have entirely disappeared. The *Dictionnaire d'Économie Politique*, referred to above, went so far as to say in 1854 that "to speak of socialism was to deliver a funeral oration." But it revived after the war of 1870 and the uprising of the Commune. Some ardent young men, imbued with the theories of Karl Marx (one of them, Lafargue, was his son-in-law), disseminated collectivistic ideas in various journals and even founded in 1880 a *Revue Socialiste*, which did not live. But the review reappeared under the same name in 1885, under the direction of M. Malon, a much more moderate socialist, — a collectivist, but not of the Marx school. Nevertheless, although M. Malon is a conscientious and erudite worker, and although several other socialists, as for example Jules Guesde, have real oratorical power, we may say that the socialist school in France lacks men of talent. For this reason, and for others which it would take too long to explain here, it has not wielded, either in theory or in practice, so great a power as might have been expected. In France there are a certain number of revolutionists, and a crowd of radicals, but hardly any socialists, although the radicals deck

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themselves willingly with this title as a feather in their caps. Still, although it be merely a matter of show, this new fashion contributes also to render the doctrines of the liberal school antiquated and unfashionable.

But the heaviest blow dealt to the liberal school came precisely from the party opposed to the socialists; I mean from the side of the landed proprietors, the manufacturers and capitalists. France had always been protectionist, — I believe wrongly so, but that is neither here nor there. Held down by the strong hand of Napoleon III since 1860 under a system of commercial treaties, negotiated more or less from the free-trade point of view, she had never forgiven the economists whom she accused of instigating this *coup d'État*. In fact, Cobden and Michel Chevalier had prepared the treaties and carried them into execution. Accordingly, at the beginning of the protectionist movement, called forth in Europe about 1876 by the importation of American wheat and inaugurated by Prince Bismarck, the landowners and manufacturers immediately revenged themselves for their long restraint by overwhelming the economists with a deluge of reproaches. All the agricultural journals, all the agricultural societies, all the agricultural congresses loaded the economists with scorn, calling them disdainfully closet economists, that is, men who know nothing of the world outside of their closets. So great was the storm that the most liberal economists, the most determined champions of free trade, were obliged to withdraw under shelter and *laisser faire, laisser passer* the torrent of protectionism which would have submerged them. One of the most prominent leaders of the free-trade school — the son-in-law of that very Michel Chevalier who had negotiated the treaty of commerce of 1860 — is known to have accepted the presidency of an association of landowners, whose object was to abolish all commercial treaties and to levy prohibitory duties on foreign wines. I mention this fact simply because it is characteristic. It is only fair to add, as an extenuating circumstance, that the economist in question had presented himself to the electors as a candidate for deputy in one of the interested departments.

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Finally, in a sphere entirely removed from that of practical interests, in that of pure speculation, some philosophers, attracted by the social problems, studied them in a very different spirit from that of the liberal school and reached conclusions scarcely orthodox in character. Thus M. Alfred Fouillée, in his work on *La Propriété Sociale et la Démocratie*, questioned the too absolute character of private property in land; and M. Renouvier, the founder of the philosophic school known by the name of "Criticism," ended by acknowledging a right to labor (*droit au travail*) as compensation for those members of society who find themselves, from the mere fact of their birth among the poorer class, shut out on all sides from national wealth. I do not speak here of M. Secrétan, the professor at Lausanne, who came to the conclusion that the wages system must ultimately disappear; for this philosopher, although widely read in France, is not French.

Thus during the past few years, the classical school has seen heavy storm clouds gathering in all quarters of the horizon. Religious beliefs, revolutionary unrest, material interests, philosophic speculations — all apparently combined to work against it, but without greatly disturbing its self-confidence. In truth there was nothing very alarming in these attacks. These adversaries had long been known, and had always been overcome. Since its birth, so to say, the liberal school had been obliged to combat the conservatives of the old régime, the socialists and the protectionists. This was its mission, this was its battle-flag. It sincerely believed, it is true, that it had left those enemies dead on the field; and it is always a disagreeable surprise to see those whom you think you have slain, rise once more and brandish their weapons. But after all, the reigning school had only to begin over again. Its lofty position, both scientific and official, did not appear to be in danger. It retained all its strongholds. The enemy surrounded it, but there could be no real peril unless they forced their way through its defences.

It was the liberal school itself that introduced the enemy into its own stronghold. Here indeed may be said: *Quos vult perdere dementat Jupiter!* This is one of the most curious

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episodes in this history. To make it clear some explanations are necessary.

I have already mentioned the fact that up to 1878 political economy had no place in the regular plan of university instruction. The economists of the dominant school rightly considered this a sad gap. They thought that if they could install themselves in the university and teach their liberal doctrines there, they would find it easy to train the younger generation in their ways. They proposed to create a chair of political economy in each faculty of law. They hesitated a little, as one does before making a leap in the dark. The proposition was adopted in the *Conseil Supérieur de l'Instruction Publique* by a majority of only one. However, the reform was effected, and from this time political economy had its distinct place in the official curriculum and in the examination programme of the thirteen faculties of law which exist in France.

The economists never doubted for one instant that these new chairs would be entrusted to veritable economists, that is to say, to men imbued with sound doctrines and educated in their school. Moreover they had their candidates all ready: in fact, they had designated them. Only one point had been forgotten, namely, that according to the university statutes no one can fill a chair in a law faculty, unless he is qualified as *agrégé en droit* or, in some exceptional cases, simply as *docteur en droit*. The former title can be obtained only after eight or ten years' study exclusively devoted to the Roman and French law. Doubtless, it may seem ridiculous enough to require such an apprenticeship for a professor of economics, who will never have to deal with French or Roman law. But such is the law; *dura lex, sed lex*. And the faculties of law, jealous of their prerogatives, would not allow their gates to be forced open. Now, not one of the candidates of the economists was an *agrégé en droit*, and only two or three were doctors. The consequence was that most of the newly created chairs in economics had to be confided, not to economists, but to young jurists, brought up in the study of the Pandects and of the Code Napoléon, but without the faintest idea of economics. They were thus compelled to study

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and teach at the same time. They entered upon their work with minds entirely free from preconceived ideas. They were truly new men, belonging to no school. Naturally they commenced by reading the works of the classical economists, the library of the *Maison Guillaumin*. But most of them did not stop here. Their legal studies, above all in Roman law, had familiarized them with the German Romanist literature, and especially with the historical school of jurisprudence of which Savigny was the most famous representative. They were therefore naturally inclined to consult the German economic literature and disposed to understand and to approve of the same historic method applied to economics. It must be remarked, moreover, that a young man who has studied law seriously for ten years, is naturally led to magnify the office of the lawmaker. He will be little apt to accept the principle of the liberal school, which maintains that the fewer the laws the better, and that to have no laws whatever were best of all. A lawyer will not be apt to relish the doctrine of *laissez faire*. It is necessarily antipathetic to his modes of thought. In all times and in all countries, but perhaps more distinctly in the history of France than elsewhere, the lawyers have been the natural supporters of the government and even, in a certain sense, the founders of the modern state. Finally, we must note as an important fact that the jurists naturally bring to bear on all questions, economic as well as other questions, the consideration of justice. Justice rather than liberty is what they seek to develop in social relations. Differing from the economists of the classical school, who studied chiefly the production of wealth, they are rather inclined to study its distribution, adopting for their rule the noble maxim which appears in the rules of Ulpian, which all law students learn by heart: *Justitia est constans et perpetua voluntas jus suum cuique tribuendi.*

The new professors of economics in the faculty of law were thus drawn, by their intellectual training and even by their profession, into a path opposite to that of the liberal school. The new movement is that known as professorial socialism, a movement into which their colleagues across the Rhine have

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found themselves forced by virtue of almost the same causes. A few remained faithful to the traditions of the liberal school, but others separated themselves from it with a great deal of noise. The professor of economics in the Paris faculty, M. Cauwès, was the first to publish his lectures in 1880. He denied the existence of natural laws in political economy, declared it necessary to deal above all with economic legislation and, adopting the system of List, showed himself a staunch protectionist. This book created an immense scandal in the camp of the classical economists. The venerable *Journal des Économistes* forgot all reserve and overwhelmed the author with positive insults. Attempts were even made to drive M. Cauwès from his chair, but without success.[1] Three years later another professor of economics, in the Montpellier law faculty, published his lectures, which were not much less heretical, although in a different way. The author admitted the existence of natural laws and upheld the cause of free trade. But on the other hand he analyzed in a rather unfriendly way the legitimacy of private property in land, criticized very energetically the system of competition and expressed some doubts as to the permanence of the wages system. Some other young professors expressed themselves very freely in their lectures, or in newspaper articles. Finally in 1887 one of them took the initiative and founded a journal known as the *Revue d'Économie Politique*, having among its editors and contributors all the professors of economics in the faculties of law, even those who were more closely in touch with the classical school. The editors of this review have not pretended to found a school, properly speaking. This would be a presumptuous mistake, considering the slight authority and the different opinions of its principal editors. They merely wished to have an independent organ for themselves, where all views could be freely expressed. With this object in view, they made an appeal to all the teachers of the different economic schools abroad, who for the most part have responded in a very friendly manner. They merely under-

[1] M. Cauwès in fact has since quitted the chair of political economy, although of his own accord. He fills to-day the chair of legal history.

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took what I shall call a work of hygienic cleansing; dusting energetically the moth-eaten economic furniture, opening wide the doors and windows to freshen the musty atmosphere, and introducing a flood of sunshine and pure air from the four corners of the world.

Nothing can describe the consternation of the liberal school on finding itself thus betrayed by the very men whom it intended to use as tools. It asked, in amazement, whence came all these mutineers? But, after a little storming it changed its tactics, and resolved to remain silent in future in regard to this unfortunate episode. By a tacit agreement among the leaders of the liberal school, it was decided that the professors of economics in the law faculties were simply presumptuous young men, utterly ignorant of what they were employed to teach, and that their dissent was of small importance and not to be mentioned in good society[1] — "Much ado about nothing."

But this policy of indifference, which had heretofore been so successful in stifling all dissent, could no longer meet with the same success. The professors of economics in the faculties of law found in the numerous students who attended their lectures (there are not less than five to six thousand law students in France) an audience — a public — that could not be taken from them. They found their support in their colleagues at home and abroad, and in the publishers. In vain had their books been put on the *index expurgatorius* of the liberal school. Their publications came from the press none the less rapidly. And if we remember that all the men in France who are to fill the positions of judges, of lawyers, of administrative officials, and the still greater number of those who are preparing for public life, — if we remember that all these must sit on the benches of the schools of law, we shall readily perceive that the movement begun in these schools is by no means one to be disregarded.

Unfortunately, the law-schools have rather too professional a

[1] Evidence of this tendency can be found in the article of M. de Foville on The Economic Movement in France, in the *Quarterly Journal of Economics*, January, 1890. *Cf.* especially (p. 224) the way in which he speaks of the faculties of law.

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character. They serve to form officials or statesmen, but seldom erudite scholars. For this reason, the instruction in economics will perhaps not result in so great an intellectual emancipation as might be hoped for. It will not readily adopt so purely scientific a character nor so liberal a method as that of the German universities, where it is placed not in the faculty of law but in the faculty of philosophy or, in some of the newer universities, in a special faculty of political science. To be impartial, I must add, moreover, that although the faculties of law include some distinguished professors of political economy, up to this time they have not produced an economist of sufficient talent or prominence to counterbalance the authority of the leaders of the orthodox school; and the same may be said, in fact, of all the other dissenting schools. Of course we must allow them a little time.

To sum up, it may be said that for some years past a very active economic movement has been going on in France which, taking all things into consideration, is full of promise. We may say that there is now as much economic activity in France as in any other country. There are no less than seven general economic journals — Germany, we believe, has but six — which represent, although unequally, all the principal schools, and which may be classed in their chronological order as follows: the *Journal des Économistes* (1842), the *Économiste Français* (1873), the *Association Catholique* (1876), the *Réforme Sociale* (1882), the *Science Sociale* (1886), the *Revue Socialiste* (1886), the *Revue d'Économie Politique* (1887). There is also a large number of special reviews, such as the *Annales de l'École des Sciences Politiques*, the *Annales Économiques*, the *Revue des Institutions de Prévoyance*, the *Devoir* (organ of the "Familistère" of M. Godin, now deceased), the *Christianisme Pratique* (founded by an association of Protestant divines), the *Revue Économique de Bordeaux*, the *Bulletin de la Société de Statistique*, the *Idée Nouvelle* (organ of the Marxist school), five or six co-operative or mutualist journals, *etc.* Moreover, there is no important literary review or political paper without several

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editors in charge of economic questions. There are three or four societies of political economy in Paris, one in Lyons, one in Bordeaux. The public, in all social classes, in all political parties, in all religious sects, takes a burning interest in economic and social questions. All this augurs well. In the light of these facts, I am unable to endorse the melancholy assertion made recently by M. de Foville: "We must admit that political economy in France has lost, during the past ten years, much of the ground which it had gained in earlier years."[1] Not at all! It is not political economy which has lost during the past ten years; it is only the orthodox school, which is by no means the same thing. On the contrary, all the ground which it has lost has been a distinct gain for the science.

Now, what is to be the outcome of this confused medley? Shall we witness the birth of some great economist or of some great school like that of the Physiocrats? And will the science of economics in France, after the lapse of a hundred years, blossom forth anew, like the plant which, if tradition is to be trusted, flowers but once a century? A not distant future will tell us.

CHARLES GIDE.

[1] The Economic Movement in France, *Quarterly Journal of Economics*, January, 1890.

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THE TAXATION OF CORPORATIONS. III.

THE discussion of corporation taxation would be incomplete without an examination of the various phases of duplicate taxation. This is all the more necessary for the reason that no attempt at a thorough analysis has ever yet been made. And yet the problems that hinge about this particular subject are so especially important in the United States as to demand the most serious attention.

What is meant by double taxation? Double taxation in the wider sense exists when the same or different persons are taxed twice upon the same source, whether this be property, income or any other element. Thus if two different persons like mortgagor and mortgagee are assessed on the same piece of land, it is double taxation. Or if the same person is taxed by two different states or localities on his income and on the property from which the income is derived, this again is double taxation. It is a mistake, however, to think that all duplicate taxation is necessarily unjust. Much confusion has arisen on precisely this point. Double taxation is unjust only when the principle of equality is violated. This is usually, but not necessarily the case. We can ascertain the limits of the principle only by analyzing separately each of the various kinds of duplicate taxation.

There are in reality no less than five different forms of double taxation in the case of corporations. These are:

1. Double taxation of property and debts or of income and interest on debts.
2. Double taxation of property and income.
3. Double taxation of property and stock.
4. Double taxation arising from interstate, intermunicipal or foreign complications.
5. Double taxation of the corporation and the holders of stock or bonds.

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Three of these forms, it will be perceived, are applicable also to individuals, as well as to corporations. Let us discuss them in order.

VII. *Double Taxation of Property and Debts.*

This first point need not detain us long. It applies in this country only to the general property tax, which we have discarded as the basis of corporation taxation. Moreover, in the case of individuals this means practically the question of taxation of mortgages and book debts, which has been discussed in a previous article.[1] Finally, in so far as corporations are concerned it has been pointed out[2] that there is really no injustice at all in not exempting corporate indebtedness. The issue of mortgage bonds by a corporation is simply another mode of increasing the working capital. Correct policy demands the taxation of corporate bonds as well as of stock, of loans as well as of share-capital. To tax corporate debts may indeed be called double taxation in so far as the tax on both property and debt is paid out of the same income; but if so, it is double taxation of a perfectly legitimate kind. It is here that the principles of individual and corporation taxation diverge.

Some of the Swiss cantons, like many of the American commonwealths, recognize this distinction between the taxation of individuals and that of corporations, by permitting the deduction of indebtedness from the property of individuals but refusing a like deduction in the case of corporate property. Such *e.g.* is the system in St. Gallen, Zürich, Ticino, *etc.*[3]

Perhaps more interesting and probably of greater future importance in the United States is the other phase of this question of the taxation of indebtedness — double taxation of income and interest on debt. While the true theory of income taxation in the case of individuals necessarily demands the deduction of interest on debts, it has already been shown that in the case of corporations the interest paid on mortgage bonds

[1] The General Property Tax, POLITICAL SCIENCE QUARTERLY, V, 1 (March, 1890), p. 32.

[2] *Ibid.* V, 3 (Sept., 1890), p. 452.

[3] Schanz, Die Steuern der Schweiz, II, 338; II, 435; IV, 281.

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must be included in the taxable income.[1] Taxation of interest on corporate debt is not double taxation, because the coupons, like the dividends, are integral parts of the income; because both bonds and stock together form what is really the working capital from which the income is derived. This whole question, however, has already been discussed. The radical difference in economic significance between a corporate bond and an individual debt must be continually borne in mind.

VIII. *Double Taxation of Income and Property.*

This second form of double taxation, like the first, involves no very complicated question; nor does the solution present any difficulties. Is it permissible to tax a corporation both on its property and on its net receipts or income? If corporations are put upon the same plane as individuals, then the simultaneous taxation of the property and of the income from the property works no injustice. If all are treated alike, it makes no difference in this respect whether there is one single high tax on property, or a low tax on property and another low tax on the profits of the property. In fact, the government would be perfectly justified in taxing the property and the income of the property and the expenses of the property and any other attribute of the property. And all these duplicate or triplicate taxes are perfectly reasonable as long as they fall equally on all. Taken together, they simply amount to a high rate for a single tax on the property. As was intimated above, double taxation is not always wrong. It is unjust only when one taxpayer is assessed twice while another in substantially the same class is assessed only once. It is the inequality of taxation that instinctively shocks us. If the tax is uniform, if all persons within the class are equally subjected to the burden, no

[1] The great defect of the otherwise admirable study of Heckel, Die Einkommensteuer und die Schuldzinsen (1890), is the failure to distinguish between corporations and natural persons. He indeed is forced to the practical conclusion that corporations must be liable for the tax on mortgage debts, but his arguments are weak and inconclusive; *cf.* p. 182. The only sound argument is the one used in the text, — the fundamental distinction between corporate bonds and individual debts.

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complaint can be lodged with justice against this sort of double taxation.

As this particular problem is not peculiar to corporations, its more extended consideration may be deferred to another place. So far as corporations are concerned, it is not a matter of practical importance. The only case in which this special question has arisen in the United States was under the laws of Alabama, now repealed, which provided for the taxation of corporate property and also of the corporate income during the preceding year.[1] Such taxation was upheld on the ground that it was only apparently double taxation.[2] What the court meant was, of course, not that it was not double taxation, but that it was not invalid or economically unsound taxation. And in this the court was perfectly correct. For the law applied equally to all individuals and corporations.

At present in the United States no attempt is made to tax simultaneously both corporate property and corporate income.[3] The nearest approach to the practice is the Pennsylvania and New York system of taxing the capital stock and also the gross receipts of certain corporations. No objection has ever been raised to these taxes on the score of double taxation; nor is it likely that such an objection ever will be raised. One might as well object to a combination of direct and indirect taxes as to duplicate taxation, on the ground that all taxes are in the last resort paid (or presumed to be paid) out of annual income. But this objection would be manifestly absurd. This second form of double taxation is thus entirely proper.

The classic home of double taxation of this sort is Switzerland. As has been shown repeatedly in the preceding essays, Switzerland has become so conscious of the manifold defects of the general property tax as to have added to it with increasing rapidity in the various cantons a tax on incomes. In this

[1] Ala. laws of Feb. 22, 1866; Feb. 19, 1867; Dec. 31, 1868; March 19, 1875; March 6, 1876.

[2] Board of Review *vs.* Montgomery Gas Light Company, 64 Ala. 276. *Cf.* Lott *vs.* Hubbard, 44 Ala. 593.

[3] The question as applied to individuals, as *e.g.* in the Massachusetts income tax, will be discussed elsewhere.

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respect corporations are in most cases treated like individuals. Baselstadt, *e.g.*, taxes corporations one per mill on the paid up capital, a quarter of one per mill on the capital not yet paid up, and one per cent on the total net income from all sources.[1] In Baselland corporations are taxed on their general property and again on their total profits, with the sole exception that when any of the profits consist of interest on capital the profits are not taxed if the capital has already been assessed.[2] Many of the cantons, however, seek to avoid the simultaneous taxation of property and income by a curious arrangement of the following sort. While the law provides for the assessment of both property and income, a deduction is made in the case of the income tax for so much of the income as is supposed to represent the actual profits of the capital already taxed. The proportion thus deducted is fixed in accordance with the estimated current business interest, ranging from four per cent in Thurgau and Grisons to five per cent in Zug, Schaffhausen, Ticino, Vaud and Zürich. The federal government deducts five per cent.[3] Bern and St. Gallen are the only cantons which attempt to draw a sharper line by levying the property tax only on the corporate real estate, but subjecting all the other property to an income tax.[4] In St. Gallen the real-estate tax is for local purposes, the income tax for cantonal purposes.

The solution of the supposed difficulty attempted by the majority of the Swiss commonwealths is, however, not a happy one. The deduction from income of the four or five per cent, presumed to represent the earnings of property, involves a misconception. It is impossible to say how much of the income represents earnings of capital and how much represents the other ingredients of profit. We are brought face to face with complicated questions of economic theory — with the distinction between interest and profits, and the separate distinct ingredients of profits. A discussion of these knotty questions lies, of course, beyond the province of this essay. But it may be confidently

[1] Law of 1889, §§ 2, 3. Schanz, Die Steuern der Schweiz, II, 84; V, 50.
[2] Schanz, *op. cit.* I, 55; V, 35.
[3] *Ibid.* I, 56.
[4] *Ibid.* II, 318, 368; III, 292.

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asserted that if a railway corporation with no bonded indebtedness and a capital of one million dollars earns seventy-five thousand dollars, it is absolutely impossible to maintain that fifty thousand dollars represents the earnings of the property and the remainder represents the earnings of the management. From one point of view all profits are profits on capital or property. An individual indeed can obtain a professional income without any capital. But in the case of a business with capital invested, it is impossible to say how much of the profits are due to the capital, how much to the personal management. Without the capital there would be no profits at all, because there would be no business. Therefore, in taxing profits we are really taxing property, or rather the proceeds of property. To segregate a part of these proceeds, and to say as do the Swiss cantons that only this particular part represents the income from the property, is an entirely arbitrary proceeding.

Again, it cannot be contended that this four or five per cent of income exempted by the Swiss laws represents only the interest on the capital, and that the remainder of the income represents only the earnings of management. For under no theory of economic profits can the surplus above current interest be entirely dissociated from capital. Even granting that a sharp line can be drawn between interest, earnings of management and profits, it still remains incorrect to confine the proceeds of capital to interest alone. It is thus inadmissible to say that in taxing income only on the surplus above four or five per cent of the taxable capital we are not taxing both property and income.

The Swiss system indeed has a very decided significance in connection with an entirely different matter, *viz.*, the question of funded or unfunded income. But as regards the point now under discussion it is evident that the Swiss cantons do not really succeed in avoiding double taxation. As we have seen, however, it is a form of double taxation which is perfectly legitimate.

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IX. *Double Taxation of Property and Stock.*

This third form of duplicate taxation must not be misunderstood. It does not refer to the taxation of shares of stock in the hands of individuals. That is a far more intricate problem, and falls under the fifth heading, to be discussed below. The point here is this: Is it permissible to tax the corporation on its property and again on its capital stock?

The answer is plain. Manifestly not, if the corporate stock can be regarded as representing actual property. We have, indeed, seen that it is a mistake economically to say, as do some of our courts, that the entire property of a corporation is identical with its capital stock. This point has been brought out so well in a Massachusetts case, and is so generally misunderstood, that it may be wise to make a more extended quotation from the decision:

> The market value of the shares of a corporation . . . does not necessarily indicate the actual value or amount of property which a corporation may own. The price for which all the shares would sell may greatly exceed the aggregate of the corporate property, or it may fall very far short of it. Undoubtedly the amount of property belonging to a corporation is one of the considerations which enter into the market value of its shares; but such market value also embraces other essential elements. It is not made up solely by the valuation or estimate which may be put on the corporate property, but it also includes the profits and gains which have attended its operations, the prospect of its future success, the nature and extent of its corporate rights and privileges, and the skill and ability with which its business is managed. In other words, it is the estimate put on the potentiality of a corporation, on its capacity to avail itself profitably of the franchise, and on the mode in which it uses its privileges as a corporate body, which materially influences and often controls its market value.[1]

But while it is perfectly true that capital stock and total property are not interchangeable terms, it cannot be denied that the capital stock of a corporation represents at all events a

[1] Commonwealth *vs.* Hamilton Manufacturing Company, 12 Allen, 303. *Cf.* my preceding article, POLITICAL SCIENCE QUARTERLY, V, 3 (Sept. 1890), p. 447.

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part of its property, or rather that the corporate property is one of the elements that contribute to the value of the capital stock. If this be true, then an increased tax on the corporation on account of its stock is *pro tanto* duplicate taxation of an unjust character. If other persons are taxed only once on their property, corporations should not be taxed again on what is at all events a part of their property.

Unfortunately there is no absolute uniformity in our legal decisions on this point. While the majority of the commonwealths hold taxation of this kind to be unjust duplicate taxation, Pennsylvania has pronounced it perfectly valid. In a celebrated case the court used this language:

> Double taxation has never been considered unlawful in this state. The real and personal property of a corporation may be taxed, although it pays a tax on the stock which purchased it. The power of the legislature is as ample to tax twice as to tax once, and it is done daily as all experience shows. Equality of taxation is not required by the constitution.[1]

Such a decision may be correct legally, but beyond all doubt it is unsound economically. Equality of taxation may not be required by the constitution of Pennsylvania, but it is one of the first and most cardinal laws in the whole science of finance. Abandon equality, and you throw the door wide open to all kinds of glaring abuses. The Pennsylvania view cannot possibly be upheld from the scientific standpoint.

Far wiser are the Maryland courts, which hold that all laws must be so construed as to avoid double taxation of this kind; and that, since in their opinion the capital stock of a corporation represents the corporate property, the payment by the corporation of a tax on capital stock necessarily exempts all the corporate property.[2] In this broad form the decision is perhaps open to criticism because of the complete identification of capital stock with corporate property. But as regards the point at

[1] Pittsburgh *etc.* R.R. Co. *vs.* Pennsylvania, 66 Pa. State, 77. *Cf.* Lackawanna Iron Co. *vs.* Luzerne County, 42 Pa. State, 424.

[2] County Commissioners *vs.* National Bank, 48 Md. 117. *Cf.* State *vs.* Stirling, 20 Md. 520; State *vs.* R.R. Co., 40 Md. 22.

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issue here, it is perfectly correct. To tax corporations simultaneously on their stock and on their property is wholly indefensible. And a few commonwealths, like Maryland, Illinois, Alabama and (for local purposes) New York, have now recognized this principle in their statutes, deducting from the value of the capital stock the value of the realty or of both the real and personal property taxed.[1]

On the other hand, the apparently similar statute of Massachusetts, which taxes corporations on their capital stock less the value of the real estate and machinery,[2] is indefensible for quite another reason. According to the Massachusetts law, corporations are taxable locally only on their real estate and machinery, while they are taxable for commonwealth purposes only on the value of the capital stock deducting the value of the real estate and machinery. Corporations are therefore taxed only once on their total property. Individuals on the other hand pay not only a tax on general property for state purposes, but another general property tax for local purposes, — not to speak of the income tax. Corporations thus are treated more leniently than individuals. According to the theory developed in the preceding essays corporations should always be locally taxable on their realty. But the commonwealth tax should be levied on the total income or, if the states will still persist in the property tax, on the total property without any deductions (except those arising from considerations of interstate comity and equity, to be discussed below). My whole treatment of double taxation is based on the assumption that the double tax is levied by administrative units of the same grade, whether states or local divisions. It manifestly does not apply to cases where one tax is levied by the commonwealth, and another similar or different tax is levied by the county or city, as in Massachusetts. Otherwise we should be forced to the conclusion that our property tax always involves a duplicate,

[1] Md. law of 1878, in Pub. Gen. Laws, art. 81, §§ 84, 85, 141–144; Ill. Rev. Stat. chap. 120, § 3, sec. 4; Ala. Code, § 453, sec. 8; New York, Laws of 1857, chap. 456, § 3, vol. 2, p. 1. In New York, as we know, corporations are locally taxable on their realty, and also on their capital stock, deducting the amount invested in real estate.

[2] Mass. Pub. Stat. chap 13, § 40.

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triplicate or quadruplicate taxation in so far as state, county, town and village levy different rates on the same property. But this is only a juggle with words. Such taxation is not in the scientific sense double taxation. Strictly speaking, therefore, the Massachusetts principle while ostensibly sound is really incorrect.

In Switzerland, the only other country in which the property tax exists, we find, in the few cases where both tangible property and capital are assessed, that the value of the taxable property is deducted from the corporate capital. Thus the new constitution of 1885 in Aargau provides for the taxation of the corporate real estate for both commonwealth and local purposes. The value of the realty is then deducted from the capital stock.[1] So also in Schaffhausen.[2] The Swiss tendency, like the American, is gradually coming to be in accord with the sounder principles.

We come now to the most important aspects of double taxation — the fourth and fifth forms. Here we have the benefit of a wide European experience. In the phases of duplicate taxation hitherto treated we can learn very little from Europe, because in no European state except Switzerland are the corporations taxed on their property as a whole; and in Switzerland the whole question of corporation law is in a far more inchoate condition than in the more developed industrial states. But the problems that we take up now present themselves in Europe as well as in this country, and have there received in some points an extended consideration, although not a completely successful solution.

X. *Double Taxation arising from Interstate, Intermunicipal or Foreign Complications.*

This fourth form of duplicate taxation appears in connection with almost every method of corporate taxation. It is so comprehensive that it will be advisable to discuss the subject under four chief headings:

[1] Schanz, Die Steuern der Schweiz, II, 239. [2] *Ibid.* II, 170 (note 1).

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A. Double taxation of corporate property.

B. Double taxation of stock and bonds or of dividends and interest.

C. Double taxation of non-resident stockholders or bondholders.

D. Double taxation of corporate receipts or income.

A. *Interstate double taxation of corporate property.* The difficulty here arises in connection with the taxation of personal property. In the case of real estate the rule universally adopted in the United States is that the property should be taxed where it is situated. There is accordingly no chance for interstate complications. But in the case of personalty the great problem is that of *situs*. Should the personalty be taxed where it is situated or should it follow the domicile of the owner? The legal conditions in the United States are chaotic.

As a general rule the personalty of individuals, if actually located in a state, is taxable there.[1] Yet in most commonwealths the legal fiction prevails that personalty follows the owner — *mobilia personam sequuntur*. This rule is certainly applicable to choses in action and all other intangible personalty. Accordingly, if the owner is a non-resident, the result will be a double taxation of his personal property, once by the state where it is located and again by the state of his residence. A few commonwealths indeed have provided by statute for the exemption of a resident's personalty if permanently located and taxed in another state. Such is now the law in Connecticut, Indiana, Maine, New Jersey, Rhode Island, South Carolina, Vermont and West Virginia.[2] The same rule has been extended by judicial interpretation to Illinois, Kansas,

[1] Cooley on Taxation, 2d ed. (1886), 373, 374. See especially Coe *vs.* Errol, 116 U. S. 517, where the court terms this an "elementary point."

[2] Conn. Gen. Stat., secs. 3828–3830 (applies only to property actually invested in merchandising or manufacturing); Ind. Rev. Stat., sec. 6287; Me. Rev. Stat., tit. i, sec. 14, § 10; N. J. Rev. Stat. [1877], p. 1151; R. I. Pub. Stat., chap. 42, sec. 9 (applies only to machinery, machine tools, stock in trade, merchandise, lumber, coal and stock in livery stables); S. C. Rev. Stat., chap. 12, sec. 1; Vt. Rev. Laws, sec. 270; W. Va. Code, chap. 29, sec. 48. *Cf.* on this point Moore, Corporate Taxation, in *American Law Review*, 1884, p. 766.

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Missouri, New York and Ohio.[1] In other commonwealths the rule is applied only in part. Thus in Arkansas, South Carolina and Virginia a similar exemption is made for all personalty except in so far as money, credits or investments in business are concerned.[2] Again in Delaware only so much of the personalty is exempt as consists of non-productive securities of other commonwealths.[3] Finally in Michigan all the personalty of a resident is taxable except that which is invested in another commonwealth.[4] But in most of the commonwealths the legal fiction still prevails, and the individual is taxed on all his personalty irrespective of its location. The obvious result, of course, is double taxation of a nature which cannot possibly be justified.

In the case of corporations, we are confronted by precisely the same difficulties. For corporate property is treated in the main like that of individuals. It is entitled to the same exemptions and subject to the same conditions. It will be readily perceived, however, with what difficulties the problem is beset when, as is usually the case, the personalty of a corporation is assessed at its place of business as the legal *situs*. In Michigan, indeed, it has been held not permissible to tax corporations for property outside the state.[5] And in South Carolina the tax is specifically limited to corporate property within the state.[6] But in general the rule is the same as in the case of the property of individuals — a rule leading to double taxation with all its attendant injustice.

Manifestly, if the commonwealths will still cling to the policy of taxing the actual corporate property, the only logical and

[1] Mills *vs.* Thornton, 26 Ill. 300; Fisher *vs.* Commissioners of Rush County, 19 Kan. 414; State *vs.* St. Louis County, 47 Mo. 594; People *ex rel.* Hoyt *vs.* Commissioners, 23 N. Y. 224; Carrier *vs.* Gordon, 21 Ohio, 605. *Cf.* for the practice and cases up to 1871, (First) Report of the (New York) commissioners to revise the laws for the assessment and collection of taxes (1871), pp. 130–147.

[2] Ark., Mansfield's Digest, sec. 5048; S. C. Gen. Stat., chap. 11, sec. 149; Va. Code, sec. 492.

[3] Del. Laws 1879, chap. 2.

[4] Mich. Laws 1885, no. 153, sec. 2.

[5] State Treasurer *rel. vs.* Auditor General, 46 Mich. 224.

[6] S. C. Rev. Stat., chap. 12, sec. 28.

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just method is for each state to exempt so much of the corporate property as is already taxable in another state. The proposition is too obvious to require any proof. The federal government has unfortunately not exercised its right to compel such uniformity, if indeed it possesses any such right — a question of grave doubt. Our only hope, therefore, lies in the progress of the commonwealth conscience. Until then we shall still be confronted by the present chaos.

B. *Interstate double taxation of stock and bonds or of dividends and interest.* The evils arising from the simultaneous taxation by different states of the same corporate stock or bonds have been so patent as to lead to statutory changes and judicial interpretations of considerable importance. In Pennsylvania, after being long the custom, it has now been judicially decided to be the law that the tax on capital stock applies not to the whole capital but only to such a proportion of the capital stock as is employed, either actually or constructively, within the state.[1] In New York, the original statute attempted to follow the old rule. But the law has now been so amended as to provide expressly for the taxation of only so much of the capital stock as is employed within the state.[2] In a case which arose under the old statute, although decided after the passage of the amendment, the Court of Appeals declared itself forced to adhere to the old rule.

> It is extremely hard and unjust, . . . but we are unable so to construe the statute as to relieve it [the corporation] therefrom. . . . The injustice of such a basis of taxation has finally been recognized by the legislature.[3]

The principle in both these commonwealths now applies equally to domestic and to foreign corporations. In Massachusetts, where the tax is applicable only to domestic corporations, no such distinction is drawn. The general corporation tax is levied there on the total capital stock irrespective of its employment.

[1] Commonwealth *vs.* Standard Oil Company, 101 Pa. State, 119. As to the previous custom, *etc.*, see Decisions of the Auditor-General for 1878–80, p. 296.

[2] New York Laws of 1885, chap. 501, p. 858.

[3] People *vs.* Horn Silver Mining Co., 105 N. Y. 76, esp. 88. Decided in 1887.

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So far as railroads are concerned, it has become the common practice in this country to assess only so much of the capital stock as is represented by the proportion of the mileage in the state to the total mileage. The same rule is observed in those cases when both stock and bonds are taxable, as in Connecticut. Such a standard, while not perfectly exact, is perhaps as nearly accurate as can be attained. And it has been upheld as an entirely constitutional method.[1] This principle of mileage is applicable equally to telegraph companies and to other transportation companies. And in such cases it is gradually being introduced, although not quite so commonly as in the case of railroads, in all those states which tax capital stock directly. The principle is a sound one.

For other corporations, however, it will readily be seen how vague is the New York and Pennsylvania doctrine of "capital employed within the state." What business firm or corporation with ramifications all over the country can tell exactly or even approximately how much of its capital is "employed" within any one state? And even could they tell, how many of them will tell, if concealment will enable them to evade the tax? In some of our commonwealths the state officers have the right to inspect the books of the corporation and to change the assessment if they deem it too low. But even then, what guarantee is there that they will discover the real proportion? The taxation of so much of the capital as is employed within the state is a difficult problem to solve.

It is interesting to notice a recent New York decision on this point. A Massachusetts corporation — a telephone company — was taxed in New York by apportioning the whole capital according to the proportionate number of telephones used in the state. Although the whole tax was declared invalid for another reason, *viz.* that the corporation was not technically doing "business" in the state, the court entered into a discussion, *obiter* indeed, of the question with which we are dealing here. Chief Justice Ruger used the following language:

[1] Delaware Railroad Tax Case, 18 Wall. 208; Erie Railroad *vs.* Pennsylvania, 21 Wall. 492.

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It is by no means clear that the mode adopted . . . produces a correct result. . . . We are quite unable to sanction a principle which would subject it [the corporation] to the liability of being taxed, not only in [the state] where it is located, as it undoubtedly would be under the law as laid down by us [in the Horn Silver Mining Company case], on its entire capital stock and gross earnings; but also in each state of the Union in which it should own telephones on such proportion of its capital stock and gross earnings as the law-makers of such state saw fit to impose.[1]

It is difficult to see the justice of this conclusion. It happens to be true that Massachusetts still follows the incorrect and inequitable plan of taxing the whole capital. But that is no excuse for the New York court to interpret the old statute in the same way, or to assume that other states will also follow the precedent which the court itself pronounces "extremely hard and unjust." Two wrongs do not make a right. In the absence of any federal law regulating the subject, the only upright course for each commonwealth to pursue is to follow the dictates of interstate comity and the sound principles of the science of finance by taxing only so much of the corporate capacity as is economically speaking within its jurisdiction. As we have repeatedly said, the taxation of corporate stock is by no means the ideal method. But if the New York principle of taxing capital stock and gross earnings be nevertheless followed, it is difficult to discover any more practicable or more defensible method of ascertaining the due proportion of capital stock employed or gross profits earned within the state than by considering the number of, or royalties from, the telephones used. It is analogous to the Connecticut system of proportional mileage as applied to railroad companies. And in the case of telephone companies, the number of instruments used is a better test than the mileage of the telephone wires; for the capital as well as the expenses are in far more direct proportion to the number of telephones in use than to the amount of the wire employed.

C. *Interstate double taxation of non-resident bondholders or stockholders.* The subject of taxation of corporate stock or

[1] People *vs.* American Bell Telephone Co., 117 N. Y. 242, especially 256.

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bonds is complicated in another way by the question of extra-territoriality. The problem is simply this: Can a corporation, even though its capital be wholly employed within the state, be taxed on its capital or bonded debt if these are owned in part by residents of another state?

The federal Supreme Court has arrived at some very remarkable conclusions. In so far as bonds are concerned, the above practice has been pronounced unconstitutional. In one case it has been held that a state tax on bonds issued by a railroad company and secured by a mortgage on a line lying partly in another state was void, because the state was taxing to that extent "property and interests beyond her jurisdiction."[1] A later case went further and decided in general terms that a tax on corporate bonds is invalid as to non-resident owners because the debts are not the property of the debtor, *i.e.* the corporation, but of the creditors, *i.e.* the bondholders. They are the obligations, not the property of the debtors. But the creditors cannot be taxed on their property because they are not within the jurisdiction of the state.[2] The particular statute in this case was the Pennsylvania law of 1868. The state courts which had hitherto entertained a different opinion were compelled to acquiesce. And in a later case, decided in the same commonwealth, the state tax on corporate loans, *i.e.* on bonded indebtedness, was upheld only in so far as it applied to the bonds owned by residents.[3] This, therefore, is the accepted law of the land.

On the other hand, shares of stock are treated quite differently. It has indeed been decided that a state tax on dividends is unconstitutional as to non-residents if the corporation be required to withhold the tax from the dividends.[4] But a state tax on capital stock, even though the stock be held partly by non-residents, is pronounced legitimate on the ground that the tax is a tax on the corporation as a whole, and not on the indi-

[1] Railroad Company *vs.* Jackson, 7 Wall. 262.
[2] State Tax on Foreign-held Bonds, 15 Wall. 300.
[3] Commonwealth *vs.* Delaware Division Canal Co., 123 Pa. 594.
[4] Oliver *vs.* Washington Mills, 11 Allen, 268.

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vidual shareholder.[1] A recent case has even decided that a state tax on the shares of stockholders which the company is required to pay irrespective of dividends, is not a tax on the shareholders but on the corporation.[2] This is true notwithstanding the fact that in another case a tax on dividends or interest paid by the corporation was held to be a tax on the income of the stockholder or the creditor and not on the income of the corporation.[3]

The present state of the law therefore is that the entire capital stock of a corporation may be taxed by any commonwealth, but that only so much of the bonds are taxable to the corporation as are owned by residents of the state. The mere statement of this proposition makes it evident how impracticable and unserviceable would be the otherwise defensible taxation of corporate property represented by its stock and bonds. The Connecticut system, which at first blush seemed to be an admirable solution of the problem in so far as transportation companies are concerned,[4] would thus appear to be shorn of its chief merits, if the present law of the land is sound law. The great majority of states, whose corporation bonds are owned mainly outside of the state in large financial centres like New York or Boston, would find such a tax sadly inadequate. And even in the state of New York, where the comptroller is now clamoring for a tax on corporate indebtedness, the proceeds would fall far below the actual capacity of the corporation. The decisions of the Supreme Court prevent, it is true, double taxation, but they prevent it so effectually as also to prevent just taxation.

From the economic point of view, these decisions are indefensible. If the tax on capital stock is a tax on the corporation, then the tax on mortgage bonds is equally a tax on the corporation. It is stock and bonds together that represent the corporate property. For the value of the stock is diminished by the existence of the bonds. The bondholders, viewed from

[1] Delaware Railroad Tax Case, 18 Wall. 208.
[2] New Orleans *vs.* Houston, 119 U. S. 265.
[3] United States *vs.* Railroad Co., 17 Wall. 332.
[4] POLITICAL SCIENCE QUARTERLY, V, 3 (Sept., 1890), p. 464.

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the economic standpoint, are no more creditors of the corporation than are the stockholders. Both together are co-proprietors, just as mortgagor and mortgagee are in economic fact co-owners of the land. It is impossible to see any economic justification for taxing non-resident stockholders while exempting non-resident bondholders. The same rule should be applied to both classes, for their interests in the corporation's prosperity are in this respect precisely the same. The original Pennsylvania decision which was reversed by the federal Supreme Court rested on an earlier case involving much the same question, known as Maltby's Case. And with all due deference to our Supreme Court it must be stoutly maintained that to the student of political economy the original Pennsylvania decision is far sounder than that rendered by the federal tribunal. In Maltby's Case the court uses the following language:

> What would the plaintiff's [a non-resident] loan be worth if it were not for the franchises conferred upon the corporation by the commonwealth [of Pennsylvania], franchises which are maintained and protected by the civil and military power of the commonwealth. . . . It is on this ground that the legislature discriminates between corporation loans and private debts as objects of taxation. . . . *The loans and stocks of a railroad company resemble each other in many respects.* Both are subscribed under the authority of a special law, and *both are so far capital* that they are employed for the same general purposes. . . . Although loans and stock are distinguishable for many purposes, yet the legislature committed no very great solecism in treating loans as taxable property within our jurisdiction. . . . Corporation loans, though in one sense mere debts, are like moneys at interest, taxable as property.[1]

This is perfectly sound political economy, although it is not now the law of this country. The supposed difficulties which might arise from the application of the principle, in so far as the taxation of the bondholder by the state of his residence also are concerned, will be seen to vanish when we discuss further below the question of incidence. For if, as I hope to show, it is not double taxation for the same state to tax the corporation on its loans and the bondholder on his bonds, it can certainly

[1] Maltby *vs.* Reading and Columbus Railroad Company, 52 Pa. State, 140.

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not be double taxation for one state to tax the corporation and the other state the bondholder.

It is remarkable that, in several cases decided since the leading case of the state tax on foreign-held bonds, the Supreme Court has applied to the relations between the federal government and foreign states a principle entirely different from that which it invoked in the case of the commonwealths. It has been held that the national tax imposed during the civil war on the dividends, coupons and profits of transportation companies is an excise tax on the business, and that it is perfectly valid even though the dividends or interest are withheld from a foreign stockholder or bondholder.[1] Justice Field in a dissenting opinion showed the incongruity between these decisions and the earlier ones as applied to commonwealth laws. He said:

> If the United States can do this, why may not the states do the same thing with reference to the bonds issued by corporations created under their laws? What is sound law for one sovereignty ought to be sound law for another.[2]

But this protest was in vain. The legal status of the problem is therefore an anomalous one. The federal government can impose a tax on the total stock and bonds, or total dividends and interest of corporations, irrespective of the question of foreign-held securities. But the separate commonwealths, which are treated like foreign countries in the case of corporate stock or dividends, can impose a tax on only so much of the bonds or interest as is owned by or due to residents. This is of course an absolutely illogical situation.

A peculiarly interesting complication arises in those commonwealths where the law of mortgage has been changed for tax purposes. One of the chief grounds of the decision in the Foreign-held Bond Case was that since the railroad lands on which the bonds and mortgages were issued lay in Pennsylvania, the non-resident bondholder had no property therein. Said Justice Field:

[1] Railroad Company *vs.* Collector, 100 U. S. 595, decided in 1879. United States *vs.* Erie Railroad Company, 106 U. S. 327, decided in 1882. [2] 106 U. S. 335.

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The property in no sense belonged to the non-resident bondholder or to the mortgagee of the company. The mortgage transferred no title; it created only a lien upon the property. Though in form a conveyance, it was both in law and equity a mere security for the debt. The mortgagee has no estate in the land.

It would be interesting, if this were the proper place, to trace the law of mortgage through both the Roman and the English law, and to show that in both systems the mortgagee had originally both possession and property, that in a later stage he had no property in the land but retained the possession, until finally he had neither property nor possession, but simply a lien.[1] Be that as it may, it is true that Justice Field correctly represented the American law on the subject. That the mortgagee has no estate in the land is the Pennsylvania law.[2] And precisely similar cases have been decided in the same way in other commonwealths. Thus, in an Iowa case, a corporation mortgage held by a non-resident was declared non-taxable in Iowa because "the mortgagee has only a chattel interest. . . . The mortgage is personal property . . . and attaches to the person of the owner."[3] So also under the old constitution of California, a case of intermunicipal taxation was decided in the same way. A judgment of record in one county upon the foreclosure of a mortgage situated in that county, the owner of the judgment being the resident of another county, was held not taxable in the first county because "the thing secured by the mortgage is intangible and has no *situs* distinct and apart from the residence of the holder. It pertains to and follows the person."[4]

It will be seen that all these cases turn upon the point that the mortgage is personal property. But in California, Oregon and Massachusetts, as we know,[5] it has been expressly provided

[1] For the Roman law of *fiducia*, *pignus* and *hypotheca*, see Hunter, Roman Law, pp. 262–276. For the development of the English law, see Digby, An Introduction to the History of the Law of Real Property, chap. v, § 5 (2).

[2] Rickert *vs.* Madeira, 45 Pa. State, 463.

[3] Davenport *vs.* The Mississippi and Missouri Railroad Co., 12 Iowa, 539.

[4] People *vs.* Eastman, 25 Cal. 603. See also State of Nevada *vs.* Earl, 1 Nevada State, 397; State *vs.* Ross, 3 Zabriskie, 517.

[5] The General Property Tax, POLITICAL SCIENCE QUARTERLY, V, 1 (March, 1890), p. 35.

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that the interest of the mortgagee should be considered, for purposes of taxation only, as realty, not as personalty. This completely changes the whole situation and entirely undermines the foundation of the decision in the Foreign-held Bond Case. If the interest of the non-resident bondholder, *i.e.* the mortgagee, is no longer personalty but real estate, it does not follow the person of the bondholder but may be taxed by the commonwealth in which the corporation is situated. The taxation of non-resident bondholders must thus be assimilated in these states to that of non-resident stockholders. The federal decision will therefore be applicable to one part, but inapplicable to another part of the United States. It may even happen that the corporate property covered by the mortgage is situated in several different states, so that part of the bonds may be subject to one law, part to another. The ensuing complications may be easily imagined. It would be far better for the Supreme Court to abandon the whole contention and to reverse its decision on purely economic grounds. In assessing a tax on capital stock or bonded debt it should be entirely immaterial whether or not some of the stockholders or bondholders lived without the state. The residence of the security holder should have nothing to do with the taxation of the corporation.

D. *Interstate double taxation of receipts or income.* This phase of interstate double taxation presents far less difficulties. In regard to gross receipts the test is a very simple one, *viz.* the gross receipts from business done within the state. In the case of insurance companies this is fast becoming the general rule in this country. It is applicable, as we have seen, to all corporations except transportation companies. The reason for the exception is that a tax on business transacted wholly within the state would result in a practical exemption of the larger part of railway earnings — that derived from or in any way connected with interstate transportation. As to other corporations, however, the gross-earnings tax can be easily arranged so as to obviate double taxation.

But if the gross-earnings tax be discarded, as we have sug-

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gested, and if a tax on net receipts or income be imposed, how does the matter stand then? Strictly speaking, only so much of the income as is earned within the state should be assessed. But since it is exceedingly difficult to apportion the expenses of a large corporation among all its branches in different commonwealths, it would seem preferable to adopt some approximate standard by which the net receipts could be measured. The most practicable and easily ascertained test is gross receipts. Thus the most approved method of taxing corporate income would be to assess that proportion of the total net income which the gross receipts within the state bear to the entire gross receipts. Such a system would present no difficulties, and would preclude all chance of double taxation of this kind.

We have thus far considered only the question of complications arising from foreign or interstate taxation. Of minor consequence, but still of sufficient importance to deserve mention, are the problems of intermunicipal double taxation. They are of minor consequence because, in the United States at least, we have but very few instances of municipal or county taxes on the receipts, income or loans of corporations which do any business without the limits of the local divisions. On the other hand we do find local taxes on the total property and on the capital stock of corporations which have more than a purely local significance. Of course the rules should be the same as those applied above to cases of interstate taxation. But as long as so few of the commonwealths accept these principles, it will scarcely surprise us to find that the local divisions almost completely ignore them. Thus in New York city, the home of many huge corporations of national importance, it is the common practice to assess for local purposes the entire capital stock of the corporation, irrespective of the question whether a portion of its property may not be situated, or whether its stock may not be employed or owned, outside of the confines of the city. This is manifestly a crude and inequitable practice. Its injustice could be readily removed if the plan laid down in these essays were pursued; *i.e.* if corporations were taxed for local purposes on their real estate only. Ultimately, perhaps, if the local needs became more

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pressing, a proportionate share of the proceeds of the commonwealth corporation taxes might be distributed among the local divisions. In this way no possible complications could arise from intermunicipal double taxation.

What can we learn from Europe on this whole subject of interstate or intermunicipal double taxation? The only countries in which such interstate complications can arise are the federal states of Germany, Austria-Hungary and Switzerland. In two of these an attempt has been made to regulate the matter.

In Switzerland the constitution of 1874 imposes on the federal legislature the obligation of preventing double taxation, without attempting, however, to analyze or point out the various forms of double taxation.[1] While several decisions of the Swiss courts have definitely settled some of the simpler problems of duplicate taxation, the particular questions that interest us under this fourth heading have not yet been adjudicated to any extent. Beyond the principle that corporations, like natural persons, are taxable on their income and on their property by the canton where their chief office or establishment is situated,[2] or where their business is conducted, no successful attempt has as yet been made by the federal legislature or courts to solve the more complicated problems discussed above. A few of the separate cantons, however, have recently enacted into statute the principle that only so much of the capital or income as is employed or received within the commonwealth should be taxable. Such, for instance, is now the law in Vaud, Ticino and Baselstadt.[3] In Bern the same principle is applied to inter-

[1] Art. 46: "Die Bundesgesetzgebung wird . . . gegen Doppelbesteuerung die erforderlichen Bestimmungen treffen." A translation of the Swiss constitution has been published as number 18 of the Old South Leaflets, Boston, 1890.

[2] Zürcher, Kritische Darstellung der bundesrechtlichen Praxis betreffend das Verbot der Doppelbesteuerung (Basel, 1882), pp. 88–93; Schreiber [same title], p. 259. *Cf.* also, in general, Speiser, Das Verbot der Doppelbesteuerung (Basel, 1886).

[3] In Vaud, all individuals as well as private corporations or societies, "sont soumis à l'impôt pour tout le capital mobilier affecté au service de leur activité dans le canton." Loi d'impôt sur la fortune mobilière et sur là fortune immobilière, du 21 août, 1886, chap. iii, art. 12. Printed in Schanz, Die Steuern der Schweiz, V, 387; *cf.* also, IV, 128.—In Ticino, "le persone, le ditte commerciali, le società o gli enti morali in genere, che, non avendo il loro domicilio o la loro sede nel Cantone, vi tengono

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municipal taxation.[1] In Uri the taxable property and profits are calculated in proportion to relative mileage.[2] In Neuchâtel foreign corporations are taxable only for the profits earned within the commonwealth.[3] In Appenzell it is simply provided that corporations should pay the income tax in the place where the business is carried on, but in such a manner as to avoid double taxation.[4] The very recent law of Ticino is most interesting, for the further reason that it also imposes a tax on all corporate loans, but allows the corporation to deduct the tax only from the interest on the bonds owned within the canton.[5] Foreign-held bonds thus escape taxation in the hands of the individual holder except by the state of the owner's residence. It will be observed that the custom in Ticino is thus the exact reverse of the practice in the United States.

In Germany the conditions are much the same. In 1870 an imperial law was enacted which forbade in express terms double taxation arising from interstate complications. This law provided that individuals should be taxed only by the state of their domicile, and that real estate should be taxable only by the state

stabilimento, succursale, agenzia, rappresentanza, o vi esercitano un' industria, oppure vi poseggono beni o rendite . . . sono tenuti al pagamento dell' imposta, in ragione della sostanza e della rendita che hanno nel Cantone." Legge sull' imposta cantonale (April 28, 1890), art. 14. In Schanz, V, 462. — In Baselstadt, "bei Gesellschaften welche neben der Niederlassung im Kanton auch eine solche ausserhalb des Kantons besitzen, tritt eine dem Umfange der auswärtigen Niederlassung entsprechende Minderung des Steuerbetrags ein." Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oktober, 1889, § 4. In Schanz, V, 50.

[1] "Bei Unternehmungen, die in verschiedenen Gemeinden ihr Gewerbe ausüben, ist die Steuer nach Verhältniss der Ausdehnung des Geschäfts an diese Gemeinden zu entrichten." Gesetz über das Steuerwesen in den Gemeinden, vom 2 Sept., 1867, § 7. In Schanz, V, 88.

[2] Uri, Steuergesetz vom 10 Mai, 1886, art. 13. In Schanz, V, 376.

[3] "Les sociétés anonymes . . . sont soumises au même impôt pour les ressources que leur procurent les affaires faites dans le pays." Loi sur l'impôt direct du 18 octobre, 1878, art. 6, § 3. In Schanz, V, 219.

[4] "Immerhin unter Vermeidung von Doppelbesteuerung." Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), art. 6. In Schanz, V, 26.

[5] The corporations "sono tenuti al pagamento dell' imposta . . . sull' importo complessivo delle obbligazioni al portatore da loro emesse." But the law contains this further provision: "Non saranno colpiti dall' imposta i capitali [including the bonds] di cui . . . ove il contribuente dimostri che ciò costituirebbe una doppia imposta." . . . Arts. 15 and 3 § 3 of the law of 1890. In Schanz, V, 460, 462; *cf.* IV, 282.

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of its location. The only clause affecting corporations prescribes that the occupation as well as the income from the business can be taxed only by the state where the business is carried on.[1] But the commission which drafted the law evaded the main question by asserting that the exact proportion of the corporate business or income taxed by any one state must depend on "the particular form of the actual conditions."[2] This, of course, has settled nothing, and the matter remains as before a subject for the separate states to regulate.

Several of the German commonwealths have now adjusted the difficulties in very much the same way that has been adopted or has been proposed in this country. Thus the Baden income tax law of 1884 provides that only so much of the corporate income should be assessed as is proportional to the amount of capital employed within the state.[3] So also the Prussian law of 1867 provides that the taxable net income of railroads which lie partly in other states should be estimated by the proportion of gross receipts within the state, and that this again should be calculated in proportion to the mileage within the state.[4] Finally the recent Prussian local tax law measures the proportion of corporate income or net profits due to each tax district by the share of the gross receipts in the case of banks and insurance companies, and by the share of the expenses for salaries and wages in the case of transportation companies.[5]

The tendency therefore seems to be the same in all countries. Whether the tax be imposed on property or on income, the law should be applicable to both domestic and foreign

[1] Reichsgesetz wegen Beseitigung der Doppelbesteuerung. Vom 13 Mai, 1870, § 3. Reprinted in Meitzen, Die Vorschriften über die Klassen- und klassifizierte Einkommensteuer in Preussen. No. 6.

[2] "Dass die Entscheidung immer von der besonderen Gestaltung der thatsächlichen Verhältnisse abhängen werde." *Cf.* Clauss, Das Reichsgesetz wegen Beseitigung der Doppelbesteuerung. In Schanz's *Finanzarchiv*, V (1888), 138–197, esp. 179.

[3] Badisches Einkommensteuergesetz v. 20 Juni, 1884, art. 5, lit. B. In *Finanzarchiv*, III, 368.

[4] Law of March 16, 1867, § 9. For the judicial decisions and rescripts on this point, see Clauss, *op. cit.* 181.

[5] Communalsteuernothgesetz von 27 Juli, 1885, § 7. Printed in *Finanzarchiv*, III, 174–193, together with an explanatory article by Secretary Herrfurth.

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corporations; and while no deduction should be made for non-resident holders of stock or bonds, only so much of the property or income should be assessed as is employed or received within the state. And since an exact standard is unattainable, it is advisable to use the approximate test of relative mileage in the case of transportation companies and relative gross receipts in the case of other corporations.

XI. *Double Taxation of the Corporation and of the Holder of Stock or Bonds.*

We come finally to the fifth and most important division in the subject of duplicate taxation — the taxation of the corporation and of the shareholder or bondholder. The question is this: If we tax the corporation, shall we also tax the individual who owns the stock or bonds of the corporation? Is this double taxation? Is it unjust taxation?

Let us first discuss the actual practice both here and abroad. In the United States the legal conditions are chaotic. In some states the tax on the corporation is declared to be a tax on the shares, which are accordingly exempted from assessment. Thus in California the statute declares that "shares of stock possess no intrinsic value over and above the actual value of the property of the corporation for which they stand," and that to tax both corporation and shareholder is double taxation.[1] In Arizona we find exactly similar language used.[2] And in a large number of other commonwealths (Alabama, Florida, Idaho, Maryland, Michigan, Montana, Nebraska, New York, North Carolina, Ohio, South Carolina, Utah, West Virginia and Wisconsin) shares of stock in the hands of individuals are exempt when the corporation itself is taxed, although the reason of the rule is not always expressly stated as in the cases just cited.[3]

[1] Cal. Code, § 3608; *cf.* Burke *vs.* Badlam, 57 Cal. 594.

[2] Ariz. Code, § 2633.

[3] Ala. Revenue Code of 1884, sec. 2, § 8; Fla. Digest, chap. 138, sec. 10; Idaho Rev. Stat. §§ 1401, 1440; Gordon's Executors *vs.* Baltimore, 5 Gill, 231; Mich. Laws of 1885, no. 153, sec. 2; Mont. act of Mar. 14, 1889, § 9; Neb. Comp. Stat., chap. 77, art. 1, sec. 7; N. Y. Rev. Stat. Pt. I., chap. xiii, tit. i., § 7; N. C. Rev. Laws,

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On the other hand the weight of judicial decisions in other commonwealths (Indiana, Illinois, Iowa, Louisiana, Maine, Massachusetts, New Jersey, Pennsylvania and Tennessee) is exactly to the contrary effect.[1] In some of these cases it has been held that "the tangible property of a corporation and the shares of stock are separate and distinct kinds of property under different ownership; the first being the property of the corporation and the last the property of the individual stockholder." Taxation of both corporation and shares of stock is hence pronounced neither duplicate nor unjust taxation, even though the shares of stock have no value save that which they derive from the corporate property and franchise.[2] In other cases again, it has been held that even though the taxes amount to double taxation, they are not unconstitutional. This, however, is true only in those states which like Pennsylvania admit double taxation even though it be confessedly unequal taxation.

Other commonwealths, again, take a less logical middle ground. In the case of certain corporations they do not permit taxation of both shares and corporation; in the case of other corporations they do not object to this simultaneous taxation. In the case of national banks, as we know, the taxation of the corporation itself is made impossible by federal law. Most of the states, therefore, tax only the individual shares, although they collect the tax through the corporation.[3] In many cases this system has been extended also to other banks besides na-

chap. 102, sec. 7; Ohio Rev. Stat., § 2746; S. C. Rev. Stat., chap. xii, sec. 6, § 19; Utah Comp. Laws, § 2009; W. Va. Code, chap. 29, sec. 51; Wis. Rev. Stat., sec. 1038, § 9.

[1] Conwell *vs.* Connersville, 15 Ind. 150; Porter *vs.* Railroad Co., 76 Ill. 561; Danville Banking Co. *vs.* Parks, 88 Ill. 170; Cook *vs.* Burlington, 59 Ia. 251; New Orleans *vs.* Canal Co., 32 La. 51; Cumberland Marine Railroad *vs.* Portland, 37 Me. 444; Tremont Bank *vs.* Boston, 1 Cushing, 142; State *vs.* Thomas, 26 N. J. 181; Whitesell *vs.* Northampton County, 49 Pa. State, 526; Pittsburgh Railroad Co. *vs.* Commonwealth, 66 Pa. State, 77; Emsly *vs.* Memphis, 6 Baxter, 553.

[2] So also in Switzerland this simultaneous taxation has been upheld on the strictly juristic ground that the corporation and the shareholder are distinct persons. See Speiser, Das Verbot der Doppelbesteuerung, and Roguin, La Règle de Droit (Lausanne, 1889), 141 and *passim*.

[3] See the first article of this series, POLITICAL SCIENCE QUARTERLY, V, 2 (June, 1890), pp. 279–283.

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tional banks. A few commonwealths (Delaware, Georgia, Kansas and North Carolina) pursue this method with regard to all corporate shares in general, and collect the tax from the corporation.[1] But in Iowa, Kentucky, Vermont and a few other commonwealths the prohibition of simultaneous taxation of both shareholder and corporation applies only to definite classes of corporations.[2] In Massachusetts, curiously enough, the corporation is taxed and the individual shareholders are exempt as regards all dues except those for school-district and parish purposes.[3]

The decisions of the United States Supreme Court are somewhat conflicting. The earlier cases seem to uphold simultaneous taxation of corporation and shareholder. In a late case, however, the court asserts that double taxation is never to be presumed; and that, although the commonwealths have an undoubted right to levy such taxes, in the absence of a special statutory provision the presumption is against such an imposition.[4]

On this point, accordingly, we find an absolute contradiction of theory. In a cognate matter there is a still greater diversity of practice. Some commonwealths, as we have just seen, tax the stockholders on the full value of their shares, irrespective of the question whether the corporation has been taxed or not. In other states, however, only a portion of the value of the shares is taxable. Thus in Louisiana, Minnesota and Nebraska, in the assessment of shares of stock to the holders, a proportionate part of the value of the real and personal corporate property taxed within the state is deducted from each share.[5] In New

[1] Del. Laws, 13, chap. 393; Ga. Code, sec. 815; Kan. Comp. Laws, chap. 107, sec. 6; N. C. Machinery Act of Mar. 11, 1889, sec. 16.

[2] In Iowa the prohibition applies only to manufacturing companies, Acts 18th Gen. Assembly, chap. 57, §§ 1, 2; in Kentucky to turnpike, gas, telegraph, telephone, express, street-railway and toll-bridge companies, Revenue Law of 1886, chap. 1223, art. iv, § 8; in Vermont to railroads, Rev. Laws, sec. 270.

[3] Mass. Pub. Stat., chap. xi, sec. 4.

[4] Tennessee *vs.* Whitworth, 117 U. S. 136, 137; also, New Orleans *vs.* Houston, 119 U. S. 265. For the earlier cases, see Van Allen *vs.* Assessors, 3 Wall. 573; The Delaware Railroad Tax Case, 18 Wall. 230; Farrington *vs.* Tennessee, 95 U. S. 686; Sturges *vs.* Carter, 114 U. S. 511.

[5] La. Acts of 1888, no. 85, sec. 27; Minn. Gen. Stat., chap. xi; Neb. act of Mar. 1, 1879, sec. 32.

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Hampshire and Tennessee a proportionate part of the real estate actually taxed is deducted from each share.[1] In Rhode Island a proportionate part of the real estate and machinery is deducted.[2] In Maine a proportionate part of the machinery, goods manufactured or unmanufactured, and real estate locally taxable is deducted.[3] Finally, in New York the statute (which applies however only to state and national banks) provides for the deduction of the assessed value of the real estate.[4] In all these cases only the property actually taxable within the state is deducted. But in Vermont, in the case of manufacturing companies the value of the corporate realty and personalty, and in the case of all other corporations the value of the realty, is deducted whether the property be located or taxable within or without the commonwealth.[5]

Such is the chaos in regard to shares of stock. The same question can of course arise in reference to the mortgage bonds. As regards the simultaneous taxation of corporate property and of the individual bondholder, the disagreement is less profound only because corporate loans are, as we know, rarely taxed. In the one commonwealth, Connecticut, where certain corporations pay what has been pronounced a property tax on the value of their stocks and bonds, it has been held not to be double taxation to assess the individual bondholder as well as the corporation.[6] And yet Pennsylvania and Maryland seem to come to the diametrically opposite conclusion, in so far as the bonds in these commonwealths are taxable only to the corporation and not to the individual bondholder.[7] In Pennsylvania we thus find the very illogical situation that, while the corporation is

[1] N. H. Gen. Stat., chaps. 53–55; Tenn. Laws, 1868–69, chap. 9, sec. 9.

[2] R. I. Pub. Stat., chap. 43, sec. 12.

[3] Me. Rev. Stat., tit. i, sec. 14, § 3.

[4] N. Y. Laws of 1866, chap. 761; Laws of 1882, chap. 409, § 312. *Cf.* People *vs.* Commissioners of Taxes, 69 N. Y. 91.

[5] Vt. Rev. Laws, tit. 9, chap. 22, sec. 288. *Cf.* on this point Moore, Corporate Taxation, in *American Law Review* for 1884, p. 771. Moore's statements are not entirely accurate.

[6] Bridgeport *vs.* Bishop, 33 Conn. 187.

[7] Pa. law of June 30, 1885, § 4; Md. Rev. Code, art. xi, sec. 97. Before the corporation tax law of 1880, the same principle applied to all corporations in New York.

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taxable in both cases, the shareholder but not the bondholder is again taxable. Maryland escapes the difficulty by declaring neither stockholder nor bondholder liable. The federal Supreme Court virtually accepts this same principle in deciding that a tax on the bonds is a tax on the bondholder, not on the corporation.[1] It may be confidently asserted, therefore, that as soon as the taxation of corporate loans becomes as general as is now the taxation of corporate stock, we shall be confronted by precisely the same difficulties.

If now we turn to Europe, we shall find a still greater diversity of practice. Of the European countries, Switzerland is the only one in which some of the cantons still tax corporate property or capital stock. And in Switzerland the condition is just as chaotic as with us.[2] Thus one set of cantons (Grisons, Baselstadt, Aargau and Ticino) formerly taxed only the shareholder, not the corporation.[3] But the intercantonal complications soon assumed important proportions. It frequently occurred that the great majority of the shareholders resided in a different canton from the home of the corporation, to the manifest detriment of the public revenue in the original canton. Owing to this fact, the above system has now been abandoned by all the cantons except Glarus.[4] A second set of cantons tax the corporate property and income, but deduct the shares, dividends or interest in the hands of the security holders of domestic corporations from their taxable property or income. That is, they tax the corporation, but not the individual. This is the law in Schaffhausen, Bern, Vaud, Aargau and Uri,[5] and is the prac-

[1] State Tax on Foreign-held Bonds, 15 Wall. 300.

[2] *Cf.* in general, Schanz, Die Steuern der Schweiz, I, 90–99; and Zürcher, Kritische Darstellung betreffend das Verbot der Doppelbesteuerung, pp. 36–41.

[3] This was true in Grisons from 1871 to 1881; in Baselstadt up to 1879; in Aargau to 1885; in Ticino to 1890. See the respective laws in Schanz, *op. cit.* III, 247 (note 1); II, 40; V, 4, § 20; IV, 281.

[4] Gesetz über das Landessteuerwesen, vom 11 Mai, 1873, § 4; in Schanz, V, 175.

[5] Schaffhausen, Steuergesetz vom 29 Sept. 1879, arts. 9 and 10, in Schanz, V, 259; *cf. ibid.* II, 169; Bern, Vollziehungsordnung, vom 22 März, 1878, § 3, in Schanz, V, 83; Vaud, loi d'impôt sur la fortune mobilière du 21 août, 1862, art. 6, in Zürcher, *op. cit.* 38, *cf.* Schanz, IV, 158 (true only to 1886); Aargau, Grossrätliche Verordnung uber den Bezug der direkten Staats- und Gemeindesteuer, vom 26 November, 1885, § 7, in Schanz, V, 15; Uri, Steuergesetz, vom 10 Mai, 1886, art. 5, in Schanz, V, 375.

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tice in Baselstadt, Schwyz and Zug.[1] The security holders of foreign corporations are, however, not exempted from taxation, as are those of domestic corporations. Grisons, moreover, has the curious provision that while corporations are taxed directly, only the shareholders of domestic corporations are exempt. The bondholders of both domestic and foreign corporations are taxable equally with the corporation.[2] In some of the above cantons the security holders are exempt only for commonwealth taxes, but are liable for local burdens. This is the case in Uri, Bern and Aargau.[3] It is the same system, it will be observed, as in Massachusetts.

A third set of cantons do not shrink from double taxation, but tax both corporation and shareholder. Such is the law in Baselstadt and Neuchâtel.[4] The decisions of the Federal Council are directly contradictory on this point.[5] Finally, a fourth set, — and this seems the growing tendency in Switzerland — seek to divide the tax between corporation and shareholder. Thus Geneva taxes the corporation on its realty and the shareholder on his shares; but does not permit the shareholder to make a proportionate reduction for the corporate realty already taxed, as is the case in New York, New Hampshire and Tennessee.[6] Appenzell taxes the shareholders on the market value of their shares, but the corporations only on their reserve fund.[7] In

[1] For these cantons, see the judicial decisions in Zürcher, *op. cit.* 38.

[2] Graubünden, Steuergesetz vom 28 August, 1881, § 16; in Schanz, V, 192.

[3] See the respective provisions in Schanz, V, 375, art. 5; 88, § 7; 15, § 7; and 19, § 18.

[4] Bern, Gesetz betreffend die direkten Steuern, vom 31 Mai, 1880, §§ 1, 8; and Gesetz betreffend die Besteuerung der anonymen Erwerbsgesellschaften, vom 14 Oct., 1889, § 1; in Schanz, V, 41, 43, 49; Neuchâtel, Loi sur l'impôt direct du 18 oct., 1878, art. 5 and art. 6, § 3; in Schanz, V, 218, 219. Schanz, I, 95, also includes Zug in this class, but erroneously, as appears from the official decision quoted in Zürcher, *op. cit.* 38.

[5] See the several cases in Schreiber, Verbot der Doppelbesteuerung, pp. 199–202. He opposes double taxation. But on the other hand, see Meili, Rechtsgutachten über die Besteuerung der Aktiengesellschaften, in the *Zeitschrift für schweizerische Gesetzgebung*, V, 489. See also Zürcher, *op. cit.* p. 40.

[6] Genève, Loi générale sur les contributions publiques, du 9 novembre, 1887, arts. 300, 324; in Schanz, V, 151, 155.

[7] Vollziehungsverordnung über die Ausführung von Art. 16 der Verfassung betreffend das Steuerwesen (April 5, 1880), arts. 5, 6. Schanz, V, 26.

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Zürich the shareholders are taxed on their shares, the corporations on their reserve fund and on the income in excess of five per cent of the capital. The income below five per cent is not taxed because it is supposed to be hit by the tax on the shareholders. For purposes of local taxation, however, the shareholders are assessed on their shares, but the corporations only on their realty and a proportionate part of their reserve fund.[1] In St. Gallen the stockholder is taxed on his shares, the corporation only on its income in excess of four per cent interest on the capital.[2]

The recent "draft of a federal law on double taxation" sought to divide the tax between corporation and shareholder in a new way. The stockholder was to be assessed by the place of his domicile on the market value of his shares up to the amount actually paid or on the dividends up to five per cent. The corporation was to pay only on the surplus value of the capital or dividends above this figure.[3] Such a plan, however, is not very logical. Although this particular draft failed of adoption because of the jealousy of the individual cantons at the supposed infringement of their state rights, the principle has nevertheless been accepted by a single commonwealth — Vaud. In this canton all shares which stand above par and all bonds which pay more than four per cent interest are assessable to the individual owners at their par value. The corporations are assessed only on the surplus above the capital stock, *i.e.* the reserve and sinking funds and other sums earned during the year.[4] Such a clumsy method is not likely to be adopted in this country. We see that Switzerland has no settled practice at all.

[1] Gesetz betreffend die Vermögens- Einkommen- und Aktivbürgersteuer vom 24 April, 1870, §§ 2, 4; Anleitung betr. das bei der Selbsttaxation . . . zu beobachtende Verfahren, § 6; Gesetz betreffend das Gemeindewesen, § 137, d, e. Schanz, V, 423, 424, 431, 439; II, 435. *Cf.* Zürcher, *op. cit.* p. 39.

[2] Gesetz über die Einkommensteuer, sowie über die Besteuerung der anonymen Gesellschaften (1863), art. 5; Verordnung über Besteuerung der anonymen Gesellschaften vom 28 Jan., 1867, arts. 4, 11. Schanz, V, 309, 311.

[3] Bundesgesetzentwurf vom 6 März, 1885. In Schanz, I, 96.

[4] "Les actions et parts de sociétés qui ont leur siége en Suisse et dont le cours à la Bourse est supérieur à leur valeur nominale ou qui rapportent un intérêt supérieur au 4 per cent de cette valeur, sont comptées dans la fortune mobilière du porteur ou

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In the other chief European countries neither general property nor capital stock is taxed at all. The whole system is one of income taxation. But the same questions arise as to the taxation of corporate profits and of shareholders' or bondholders' income.

In England the income tax payable on annual profits or gains according to schedule D of the income tax is paid directly by the corporation, and is deducted by it from the dividends or coupons due the security holders. These are then to that extent exempt from the income tax.[1] In Austria the facts are similar to those in England.[2]

In Italy the law requires the income tax to be paid by the corporation, but does not interfere with the adjustment of the tax between the company and the shareholders. Nothing would prevent the corporation from deducting the tax from the dividends. In fact, however, it is the custom for the corporation to charge the tax to expense account. The result for the shareholder is the same. He is not assessable on his dividends because the law expressly forbids double taxation of this kind.[3] As regards bondholders the companies are required to pay the tax on coupons, with a right to recoup from the bondholders.[4] The companies generally do not deduct anything from the coupons, but, as with the tax on dividends, simply charge it to expense account. In that case it would seem as if the stockholders were liable for the tax, since, strictly speaking,

des créanciers pour leur valeur nominale seulement. . . . L'avoir net (réserves et amortissements compris) des sociétés . . . est compté dans la fortune mobilière de ces sociétés pour tout ce qui excède le capital social." Loi d'impôt sur la fortune mobilière, *etc.*, du 21 août, 1886, art. 11. Schanz, V, 387; *cf.* IV, 158.

[1] Ellis, A Guide to the Income Tax Acts, pp. 78–112.

[2] Wagner, Direkte Steuern, § 103, in Schönberg, Handbuch der politischen Oekonomie, III, 307. Wagner's discussion of double taxation is most fragmentary and inconclusive.

[3] "Ne saranno soltanti eccettuati [in the taxable income] i redditi che per disposizione della presente legge siano già una volta assoggettati all' imposta in essa stabilita." Legge per l' imposta sui redditi di ricchezza mobile, art. 8, § 2.

[4] ". . . Le società anonime dichiareranno non solo i redditi propri, ma eziando . . . gli interessi dei debiti da loro contratti e delle obbligazioni da loro emesse, e pagheranno direttamente l' imposta relativa anche a questi ultimi redditi, rivalendosene sui loro assegnatori e creditori mediante ritenuta." *Ibid.* art. 15.

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the tax paid by the corporation would have to come ultimately out of the stockholders' dividends — not out of the bondholders' interest, which is legally fixed. In actual practice, however, this distinction is not observed. The bondholders, moreover, are not assessable if the corporation has paid the tax.[1]

In France the *taxe sur le revenu des valeurs mobilières*, in so far as it applies to the dividends or coupons of corporate securities, may be primarily collected from the company and then deducted by it from the sums due the security holders, as in England; or the tax may be assumed directly by the companies,[2] as in Italy, in which case, as we have seen, the shareholder and not the bondholder suffers. This actually makes a distinction the significance of which will be pointed out in a moment.

In Germany every possible plan has been tried, without any definite or uniform conclusions being reached. The matter is further complicated by the fact that corporations like individuals must pay a business tax (*Gewerbesteuer*), somewhat akin to our Southern licenses or occupation taxes. In a large number of German states (*e.g.* Prussia, Oldenburg, Brunswick, Gotha, Schaumburg-Lippe, Waldeck and Lübeck) the corporations pay no income tax, but the shareholders and bondholders are taxed on their income.[3] In other states, like Saxe-Weimar, Lippe-Detmold, Bremen and Hessia, the corporations are assessed, but the shareholders and bondholders are exempt.[4] Even in these

[1] For much official information and for valuable documents on the taxation of corporations in Italy, my thanks are due to Signor Luigi Bodio of Rome and Professor Rabbeno of Bologna.

[2] Tanquérey, Traité . . . de l'impôt sur le revenu des valeurs mobilières, pp. 143–150; Vignes, Traité des impôts en France I, 405–409; Kauffmann, Die Finanzen Frankreichs, pp. 288, 291.

[3] *Cf.* the details in Antoni, Die Steuersubjecte im Zusammenhalte mit der Durchführung der Allgemeinheit der Besteuerung nach den in Deutschland geltenden Staatssteuergeltzen. *Finanzarchiv*, V, 916–1033, esp. 1010.

[4] Sachsen-Weimar, Gesetz über die allgemeine Einkommensteuer, v. 19 März, 1869 [with amendments of 1874, 1877 and 1880], §§ 48 and 4. Printed in *Finanzarchiv*, II, 932. — Lippe-Detmold, Gesetz die Klassen- und klassifizierte Einkommensteuer betreffend, v. 1868 [with amendments of 1882 and 1885], §§ 1, 7. — Bremen, Einkommensteuergesetz, v. 17 Dez., 1874, § 5. — Hessen, Gesetz, v. 1884, die Einführung der Einkommensteuer betreffend, arts. 4, 19. In *Finanzarchiv*, II, 383–434. For Hessia in particular, see Schanz, Die direkten Steuern Hessens und deren neueste Reform. *Finanzarchiv*, II, 235–529. Also Conrad's *Jahrbücher*, XII, 40.

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commonwealths, however, the definitions of corporate net income do not tally exactly. In most of the remaining states, like Saxony, Baden, Bavaria, Würtemburg, Mecklenburg, Anhalt and the other minor commonwealths, both corporation and security holder are taxed, — the corporation on its income or business, the individual on his income from the corporate security.[1] In one case (Baden) the same income is even taxed four times. That is, the corporation pays a business tax (*Gewerbesteuer*) and an income tax, while the individual shareholder or bondholder pays not only an income tax but also a tax on the interest of his capital invested in the bonds or stock (*Kapitalrentensteuer*).[2] In the recent draft of the bill to reform the Prussian law, this same quadruple taxation was proposed.[3] But its absurdity was so manifest that the whole project failed. It was also proposed in Hessia, but without success. So that Baden is the only state in the world which can pride itself upon assessing the same object four times.

We see hence that in Europe there is no settled practice at all. The tendency on the whole seems to be to tax the corporation and to exempt the individual for his income from corporate investments. Is this the correct policy? Is it true that in taxing the corporation, whether on property or on income, we are taxing the individual holder of the shares or bonds?

This brings us to the pith of the question. What is the incidence of the corporation tax? Where does the burden

[1] Sachsen, Einkommensteuergesetz v. 1878, § 4.—Bayern, Einkommensteuergesetz v. 1881, art. 1, 15. In Seisser, Die Gesetze über die direkten Steuern im Kgr. Bayern, I, 158. — Würtemberg, Gesetz v. 1872, art. 1, § 3. In Sammlung württembergischer Steuergesetze (1883). — Mecklenburg, revidiertes Contributionsedict v. 1874, §§ 13, 45. — Baden, Gesetze v. 1884, die Einführung einer allgemeinen Einkommensteuer betreffend, art. 5. In *Finanzarchiv*, 361–394. *Cf.* Philippsberg, Gesetz über die direkten Steuern in Baden (1888). — Anhalt, Gesetze v. 1886, Einführung einer Einkommensteuer . . . betreffend, §§ 2, 4. *Cf.* Schanz, Die Steuern im Herzogthum Anhalt, ihre Entwickelung und neueste Reform. *Finanzarchiv*, IV, 961–1070, esp. 1016.

[2] *Finanzarchiv*, II, 320. *Cf.* Lewald, die direkten Steuern in Baden; *Finanzarchiv*, III, 350.

[3] Einkommensteuergesetzentwurf von 1883.

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really fall? This question has never yet received adequate attention.[1]

XII. *Incidence of the Tax.*

It is generally assumed that the tax on the corporation is a tax on the shareholder or bondholder. But a distinction must be drawn between the original holder and the recent purchaser of corporate securities. From the best consideration that I have been able to give to the question, it seems that in certain cases the tax is not borne by the purchaser of new corporate securities, but that it falls entirely on the original holder of the old securities issued before the tax was imposed. Let us take the case where the corporation is taxed on its income. A corporation previously untaxed has been paying, let us suppose, five per cent dividends on its stock quoted at par. If a corporation tax of ten per cent be imposed on the dividends, the stockholder will get only four and a half per cent. As we must assume, however, that the usual rate of profits on other non-corporate investments has remained unchanged, the price of the stock *ceteris paribus* will inevitably fall to ninety. People who can get five per cent on their capital will not ordinarily consent to take four and a half per cent. While therefore the original holder of the stock will lose doubly — once in his decreased dividends, and again in the depreciation of his capital invested in the shares — the new purchaser who buys at ninety will lose nothing. He will on the contrary virtually escape taxation entirely. The amount of the tax is previously discounted in the depreciation of the security. With the lapse of time and the fluctuations in the market the original holders all disappear. Hence at any given time an income tax levied only on the corporation and not on the shareholder does not affect any one except the few original holders who bought before the imposition of the tax. It is only a question of a few decades until this class of original holders disappears entirely.

[1] The nearest approach to a discussion of this question is to be found in Helferich, Ueber die Einführung einer Kapitalsteuer in Baden; Tübinger *Zeitschrift fur die gesammte Staatswissenschaft*, 1846, pp. 291–324, esp. 315 *et seq.*

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As to bondholders, the argument is precisely the same as in the case of stockholders, if the corporation is empowered to deduct the tax from the coupons. The lower rate of interest is discounted in the depreciation of the bond, so that the new purchaser loses nothing. But in those cases where, as frequently happens, the tax is borne by the corporation and not deducted from the coupons,[1] the bondholder does not suffer at all, except in the very indirect sense that it somewhat lessens the ultimate security of the mortgage.

Of course this is more or less true of all new taxes under certain conditions. A new tax affects the original owner of the taxable article more than the new purchaser. In the case of direct taxes the original holder is injured while the future purchaser discounts the tax in the depreciation of the article. In the case of indirect taxes the reverse is true. For the effect of the tax is to increase the price of the article. The lucky owner who holds the article before the imposition of the tax reaps the benefit of the rise in price. But the intricate point which is usually overlooked is the question whether the new tax is a general or a partial tax. If the direct tax applies to all subjects in the class and to all classes, then the new purchaser is taxed equally with the original owner. For if the tax is general there will be no depreciation in value. It is only when the tax is a partial tax, assessing some articles in the class more than others, that the tax will virtually be capitalized, and that a decrease of the value of the overtaxed article will ensue.

If we apply this principle to the corporation tax we reach the following results. If the corporation tax simply forms a part of a general scheme of income taxation, as in England or Italy, then no serious injustice is done by exempting the shareholder.

[1] During the Civil War, when a federal tax was imposed on the coupons and dividends of certain corporations, many corporations declared these "free of tax," and refused to withhold the amount from the sums due to the bondholders and stockholders. They simply assumed the tax and charged it to expense account, asserting that while the law authorized, it did not direct them to withhold the tax. See *Internal Revenue Record*, vol. i (1865), p. 153.—The practice was thus the same as in Italy to-day.

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The tax affects the interest on all investments, not simply on corporate securities. The investor, whose interest was cut down in our supposed case to four and a half per cent, will not find any non-taxable securities of equal desirability from which he can obtain five per cent. Thus the whole reasoning of the case falls away. In such a case, therefore, the tax on the corporation is a tax on the investor. To tax both corporation and individuals on their income would hence really be double taxation. But on the other hand, if the corporation tax is a partial tax, — *i.e.* if only corporate securities and not the other securities are taxed, as in France, or if only a few classes of corporations are taxed, — then the taxation of the corporation is not sufficient to reach the purchasers. The purchaser will practically escape the tax because the freedom of investing in non-taxable securities will enable him, as explained above, to discount the tax in the price he pays. To tax both corporation and shareholder in such a case is hence not unjust taxation or double taxation. To tax the corporation alone would in reality exempt the shareholder who has purchased after the tax was imposed. And with the lapse of time this class will include all shareholders.

Thus far we have been discussing the incidence of the corporation tax in a scheme of income taxation. How does the matter stand in the case of the property tax?

The principle is identically the same. Let us assume that in addition to the corporation tax a general property tax is actually levied on all individuals. In such a case the corporation would pay the tax assessed upon it, and the individual would pay upon the corporate shares and bonds. This would indeed be duplicate taxation, but only on the assumption that the corporation tax is imposed on all corporations in general, and that the property tax is actually assessed on all kinds of property. In such a case it would be unjust to tax both corporation and shareholder. This is the assumption made by most of the American commonwealths, which, as we know, generally exempt the shares when the corporate property or franchise is taxed.

But the assumption is incorrect. In the first place, only

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special classes of corporations are usually taxed. Secondly, the general property tax we know to be so only in name. By far the larger part of personal property or investments in the hands of individuals escapes taxation. Under these conditions the matter is entirely different. The corporation tax will now be discounted in the lower market value of the shares, because, other things being equal, the value of new investments will vary in proportion to the net profits to be derived therefrom. Although the corporate tax reduces the dividends, yet the reduced dividends on the reduced value will, as an investment, still equal the larger dividends on a property of greater value — greater because untaxed. Although the sums are smaller, the percentage is the same. Thus where there is only a partial tax on personal property the corporation tax puts the new purchaser of shares in the same position as if he owned non-taxable property, *i.e.* it practically exempts all the shareholders except the original owners. In the case of bondholders where the corporation tax is deducted from the coupons, this is equally true. And when the corporation tax is assumed by the corporation and not deducted from the coupons, — the almost universal rule in this country, — then the bondholders are certainly not reached at all, except in the very indirect way that they may be exposed to an ultimate diminution in the security of their lien. But the tax as such does not strike them at all. Their property, consisting of corporate bonds, goes scot free. A property tax or franchise tax on the corporation, under the given conditions, is not a tax on the individual holder of corporate securities.

The practical conclusion applicable to the United States to-day is as follows. It is frequently proposed that the general property tax be abandoned, and that it be replaced by a tax on real estate. This is not the place to enter into a discussion of the incidence of such a tax. But it may be declared a gross mistake to believe that such a tax will shift itself equally over the whole community, so as to produce practical equality of taxation. This Physiocratic, complacent, easy-going doctrine has been abandoned, for reasons not to be discussed here, by all scientists and even by many practical reformers in this country.

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Their plan now is to supplement the real property tax by a tax on corporations, on the assumption that it will be possible to reach in this way on the one hand the owner of realty, and on the other the owner of personalty.

But if the preceding analysis is correct, the imposition of a corporation tax together with the real-estate tax on individuals is still inadequate to realize the principles of uniformity and equality. If the personalty of individuals is exempt, then a corporation tax, however assessed, is insufficient to reach the owners of personalty. For it would at best, even in theory, reach only the owners of a limited class of personalty, *i.e.* of corporate securities. And in actual practice, as has been shown, it would not reach even these, because the tax would be discounted in the depreciation of the corporate stock or bonds. The new purchasers — that is, after a short time all the possessors — would still go virtually untaxed, together with all those individuals whose personalty consists in non-corporate investments. To continue the general property tax in its present shape is rank injustice. To abolish the personal property tax and to replace it by the corporation tax is indeed an easy method of securing revenue for the state. It constitutes an undeniable step in advance. But it is still inadequate to attain justice as among the taxpayers. The corporation tax, in other words, if it be assessed on the correct principles laid down in these essays, is a step forward in reform and deserves on that account our hearty good wishes. But it is not the ultimate solution of the problem of equitable taxation.

EDWIN R. A. SELIGMAN.

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HERMANN VON HOLST.[1]

"I CAME to the United States as an emigrant, and one of the first things I did was to have my declaration of intending to become a citizen registered in the City Hall of New York. I, in fact, felt with the people of the United States before I commenced to study them and their institutions." Such is the statement of Professor von Holst in the preface to the first volume of his constitutional history, issued in 1873. Let us consider how far his life and his work during the last seventeen years prove that he feels with and understands the people of the United States.

Hermann Eduard von Holst was born June 19, 1841, under conditions calculated to lead to sympathy with a free people. He was the son of a poor German parson in Livonia. His circumstances were so narrow that his university education was obtained only with great difficulty, first at Dorpat, in his native province, later at Heidelberg, where he took his doctor's degree. In 1866 he became a tutor at St. Petersburg. The publication of a political article caused his exclusion from the Russian dominions, and having resolved to emigrate to America, he arrived in New York as a steerage passenger in 1867.

In America as in Europe he learned to feel with the people through personal privation. At last he got a foot-hold as a teacher of German and as a tutor, and in the campaign of 1868 he made political speeches which attracted attention. He was for some time engaged as an editor of the valuable but little known *Deutsch-Amerikanisches Conversations-Lexicon.* Several Bremen gentlemen about this time combined to offer inducements to some author to prepare an account of the workings of

[1] The Constitutional and Political History of the United States. By Dr. H. von Holst, Professor at the University of Freiburg. Translated from the German by John J. Lalor. [Vol. VI] 1856–1859. Buchanan's Election — End of the Thirty-Fifth Congress. Chicago, Callaghan and Company, 1889. — Large 8vo, 352 pp.

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popular government, designed to affect the reorganization of Germany under the new North German Confederation. Von Holst, through the intermediation of von Sybel, was entrusted with the work; but he soon saw that he could not satisfy himself within the limits proposed, and the work thus begun eventually expanded into the *Constitutional History*.

Meanwhile von Holst found himself in a position highly favorable to that scientific study of the history of the United States to which he was eager to devote himself. At the founding of the University of Strasburg after the war of 1870–71, he was called as professor to the new institution. After two years of service he accepted a call to the University of Freiburg. This was then one of the feeblest of the German universities; but it grew steadily and rapidly until it surpassed Heidelberg in numbers. His first volume, published in German in 1873 and in English in 1877, made him known throughout America; and twice, at considerable intervals, urgent calls came to him from Johns Hopkins University. Both times he declined the far higher salary, and he still continues an honored and influential member of the Freiburg staff.

The spirit of von Holst's work and his qualifications for the task he has undertaken may be better understood by a brief account of his position and activity at Freiburg. He lives in an apartment in a handsome house owned by himself as an investment. Just before going to Strasburg he was married to an American lady, a graduate of Vassar College, and English is the usual family language. His domestic life is happy, and he himself avers that he is looked upon as a fanatic because he so vigorously combats the South-German custom of the men leaving their families in the evening and congregating in the *Wirthshaüser*. For many years he has suffered from chronic digestive troubles which keep him much of the time in such pain that ordinary men would feel justified in seeking a hospital. His chief recreation is to spend as much time as possible at his little estate a few miles away, which he professes to call *Ferkelschloss* — "Shote Castle."

As is usually the case in Germany, his duties as a professor

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absorb the lesser part of the time. Trained as he was in the school of von Sybel, his interest has always been chiefly in modern history, and especially in its application to present problems. His favorite lecture subjects are the French Revolution, the history of Europe since 1815 and English constitutional history. He never lectures on American history, because, he says, he should have no hearers; but in his seminary he has received a succession of American students, of whom the writer was one in the years 1882–84. As a lecturer he is much more like the French than the German professors: he excels in lucidity, in strength, in analytic power; he introduces apt and often dramatic quotations from sources; and his great reputation in the university and throughout Germany is heightened by his possession of a stirring eloquence.

In fact, although von Holst is a tower of strength to the university, and has recently served his term as Prorektor, his tastes incline him less toward an academic than toward a public life. He is well known as an orator, and is in request for speeches on public occasions. The request is usually without fruit, for he holds to his scientific work with great tenacity. For eight years he has served as a member of the *Herrenhaus*, the upper chamber of the Baden legislature, first by nomination of the Grand Duke, to whose son and heir he was at one time tutor, and later as representative of the University of Freiburg. In the legislature he is a faithful member and he has been much concerned in the legislation of the period. He had long been an opponent of the domestic policy of Bismarck, but he came forward in the elections of 1890 as a candidate of the National Liberal party for the Imperial Diet; the district was hopelessly against his party, and he was defeated. It is easy to see in his public service the reason why he should prefer his position in Freiburg even to the flattering opportunities in an American university.

Neither his professorial nor his legislative duties have been allowed to interfere with what von Holst regards as his great work in life. Year by year the *Constitutional History of the United States* has moved forward till the fifth volume, the sixth

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of the translation, has appeared before the public. His unusual qualifications for this great task have already been enumerated: long historical training, great experience of life, five years' residence in the United States, and participation in public affairs. To these may be added two long visits to the United States since his departure. In 1878–79 he spent a year in this country, and in 1884 he was here for several months. For material he has been thrown chiefly on the printed sources in his own excellently chosen library, and on the large collections of the British Museum and the *Bibliothèque Nationale* in Paris. In no part of his field has he followed lines laid down in preceding works: of the later period which he treats he is the first systematic historian. His conclusions are based on the careful study of biographies and memoirs, and especially of the neglected *Congressional Globe* and other government publications. No one who has seen the unwearying patience with which he follows out the tangled threads of debate in the constitutional crises can fail to appreciate the sifting of the material in his work. He says himself that had he possessed the means to employ assistants so as to have used their results, he might perhaps have made a better work; but it would certainly have been very different from the present history, for which the material has all been assembled by one brain. Methodical as most Germans, he far surpasses many of his fellows in intensity of application. His practice is never to put pen to a sentence till it is fully framed; and he often passes an hour motionless in his chair, or walking up and down the floor, till a conclusion is reached and a statement worked out.

Measured by the number of volumes, the twenty years of study have been prolific: six volumes of history, one biography, one treatise, several monographs and sketches. The first to be published was Volume I of the *Constitutional History*, 1873 (in translation, 1877), to which von Holst gave the German title: *Verfassung und Demokratie der Vereinigten Staaten.* It is not strictly speaking a history, but rather a series of connected essays on the genesis of the constitution and its development to 1829. To the next volume, published in 1878, von Holst

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himself gave the title: *Verfassungsgeschichte der Vereinigten Staaten, Band I.* It is cast into a closer narrative form, and takes up the far-reaching constitutional changes of Jackson's, Van Buren's and Tyler's administrations. This volume appeared in translation, in 1879, as Volume II of the American edition of the whole work. Volume II of the *Verfassungsgeschichte* (Volume III of the translation), 1881, shows the effect of the constant increase of materials in that it covers but the four years 1846–50; and the slavery question, which receives careful monographic treatment in chapters of the first two volumes, forms the staple of this volume. The next work to appear was the *Calhoun*, in the American Statesmen Series, 1883; the slavery question is here grouped about the political life of the champion of slavery in Congress, whose singular and contradictory character has aroused the sympathetic interest of the author. In 1884 Volume III (1850–56) appeared (translated, 1885, as Volumes IV and V of the American edition); and in 1885 the *Staatsrecht* (translated[1] in 1887), which has been reviewed in a previous number of this journal.[2] In 1888 came Volume IV, Part I, of the German edition, translated in 1889 as Volume VI of the American edition. This covers the period 1856–59, and with the exception of a sketch of John Brown, which may be considered an advance sheet from the next volume, is the last important work from von Holst's pen. The forthcoming Volume IV, Part II (Volume VII of the translation), is practically ready for the press and will bring the story down to the outbreak of Secession. Here the formal work will stop for the present; but after a vacation in America the author proposes to review the whole field in a brief narrative and constitutional history, which will sum up his conclusions in a more popular form.

Volume VI of the American edition, which now lies before us, is so closely connected with the author's other writings that a criticism upon it is necessarily a criticism of his whole method. It may therefore be treated as an example rather than as an inde-

[1] H. von Holst, The Constitutional Law of the United States of America. Translated by Alfred Bishop Mason. Chicago, Callaghan and Co., 1887.

[2] POLITICAL SCIENCE QUARTERLY, I, 4 (December, 1886), pp. 612 *et seq.*

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pendent publication. The first thing which strikes the reviewer is the size of the work. The three hundred and fifty-two pages cover but two years and a fraction, from December, 1856, to March, 1859, and include but two great events, the Dred Scott decision and the Lecompton constitution. Written upon a similar scale, a history of the Union would occupy forty volumes. The whole extent of the six volumes is upwards of thirty-one hundred pages; by a mysterious law of increasing returns, the work expands at the latter end till it is out of proportion. The number of persons who have ever read three thousand pages of grave matter on all subjects put together is limited; and the size and cost of von Holst's history are serious drawbacks to its usefulness. The author's defence is that he has omitted ten times as much as he has inserted; that he is the pioneer in a field hitherto unworked; and that his history is intended for those who will give it time and study. The justification for voluminous works must always be the belief that they will permanently affect the popular conception of the period considered; a briefer treatment might in this case produce a greater effect.

Like its predecessors, Volume VI is well furnished with footnotes. The author has declared that he is obliged to append a panoply of notes because he is breaking ground and because his conclusions are so often contrary to the ordinarily received views of United States history that, for the protection of his own reputation, he is called upon to place his authorities before the eyes of his readers. The quotations are, on the whole, briefer than in the previous volumes. For his numerous and precise references the thanks of scholars are due to Professor von Holst: he has set the example of a scientific method; he has left a guide for later scholars; he has fearlessly made public the grounds for his conclusions. Another student, examining his references, may hold that they do not always bear him out; but the author by his citations invites examination, and stands ready to meet his critics.

In this volume, as in the others, the work is not, and does not aim to be, a complete history. Those events which do not bear upon the advance of the slavery contest are left undescribed, or are simply mentioned. This lack is characteristic

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of the whole history. The style is allusive. Read by itself, without a previous knowledge of political details, the volume would leave upon the mind a disjointed and incomplete effect. The narrative is compressed and uneven. The sixth volume, like the first, is rather a series of closely connected essays on constitutional topics than a consecutive history. The discussions of the Mormon question, of the debates on the Lecompton constitution, are both admirable; but the background of general political movement is wanting. The author might reply that narrative history could be written by many other hands; that he alone had undertaken the labor of a search into constitutional cause and effect. But in his anxiety to set forth clearly and distinctly the constitutional elements of the struggle over slavery he has destroyed the impression of continuity which he is most anxious to leave upon his reader. It is for this reason even more than because of the length of the work that von Holst's reputation as a writer for Americans in general must depend on his *Staatsrecht* and his *Calhoun*, and still more on his projected brief history; the constitutional history must remain a guide for the constitutional student.

Another fault of style is the complexity of construction and profusion of metaphor, which are perhaps somewhat increased in some passages by the process of translation. Take an example at random, page 133:

> And if all this was already determined by the political nature of Mormonism, the same was true, in a still higher degree, of the social institution, which, partly on account of its exclusiveness — that is, its absolute irreconcilability with the ethico-moral convictions and with the fundamental principles of legal life of the rest of the people — tended more and more to become its principal pillar, although it was only a supplementary appendage to the original body of doctrine.

It is a striking fact that the author's own English style in the *Calhoun* is less involved and abstruse than that of his translator, Mr. Lalor. In common with the whole series, Volume VI is deficient in those conveniences which cost an author little labor and which double the value of his work to the reader. The first two volumes had no other guide to the text than a list

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of half a dozen chapters; later volumes contain an ill-arranged table of contents. No head-dates are inserted in the running headings — an omission which causes peculiar vexation in a work so far from chronological; and no volume has an index. The author promises an index to the whole at the end of the work; till that time the reader who wishes to find again some of the phrases which most attract him has no shorter way than to turn the leaves.

The characteristics thus far discussed are important, but the value of the work must be determined from deeper considerations. Volume VI has all the peculiar qualities which make von Holst's works stand out from all other histories of the United States. The volume is, even more than earlier ones, based on the debates and documents of Congress: it is in considerable part a legislative history. As a statement of facts, as an evidence of the movement of public opinion, the speeches in the *Congressional Globe* are valuable: the author is perhaps too prone to look upon them as final. He has sometimes been accused of too facile an acceptance of untrustworthy authorities. Some years ago a very eminent Massachusetts statesman accused him of undue dependence on Joshua R. Giddings and John Quincy Adams. An examination of von Holst's foot-notes showed that he had cautioned his readers against Giddings, and had quoted Adams chiefly for statements of fact. With due allowance for difference of judgment or for errors in judgment, the author discriminates between his authorities and depends upon sources as none of his predecessors has done.

Whatever criticism may be made upon the details of the author's method, no one can deny the force and interest of his works. Volume VI bears throughout the mark of a strong mind, well convinced of its own conclusions. The tone of the writer is always positive and sometimes dogmatic. For this characteristic there are two reasons: von Holst feels a pardonable pride in the possession of a large body of facts hitherto almost unworked by a philosophical writer; and he sees what he does see with such clearness that he is impatient alike of the characters who misbehave and of men of a later generation who admire them.

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Yet it is this impatience with characters whom he considers unworthy that has enabled him to break down some of the best developed political myths in United States history. He has attempted little with regard to Jefferson: the task of analyzing that unequally great man has been left for Henry Adams. But the chapter in the second volume on "The Reign of Jackson" must in the end aid to destroy the unreasoning admiration of that President which has lasted down to the present day. Polk and Pierce have received a like castigation in later volumes: it is in this volume the turn of Douglas and Buchanan. The hearty, unconcealed contempt for men who have no political principle except to be on the winning side is ingrained in the author: it appears in his vigorous accusation of all "Northern men with Southern principles" and especially of Douglas. For men like Calhoun, champions of their own institutions, he has respect; for Douglas he has so little that he gives him no credit even for his undoubted lively national feeling. Like all writers of the present day, von Holst cannot picture to his mind a state of political feeling in which the majority of voters, North as well as South, shared Douglas's indifference as to whether slavery were "voted up or voted down." He seems to single Douglas out for castigation from among the whole group of politicians, but he disentangles in this volume the complications of the man's character and his lack of moral principle. He shows how inevitable was the disruption of the Democratic party, and how irresistibly yet unwillingly Douglas was compelled to abjure the Lecompton constitution and thus to give up all hold on the Southern Democrats, in order to maintain his control of the Northern Democrats.

Until the appearance of this volume the part of Buchanan in the first three years of his administration had never been clearly understood. We now see the elements which prepared the way for his abject downfall in 1860–61. He had undertaken to unite his party by yielding Kansas to the Southern wing, and he was unable to deliver the goods; he set himself against the sense of fair play of the nation, and he was overwhelmed. Here is von Holst's estimate of him:

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[He was] much inclined to purchase freedom from trouble, care and danger, at a high price. But, at the same time, his vanity was great enough, notwithstanding all this, to play for the highest prize, and his vain self-reliance could not but grow, through his great degree of weakness, to senescent wilfulness, and this all the more the deeper he was dragged into the whirlpool of the conflict of over-powerful actual events, promoted as much by his marrowlessness as by his blind self-reliance. Weakness, self-overestimation and wilfulness — a more disastrous combination of qualities could, under existing circumstances, be scarcely imagined.

Von Holst is no hero-worshipper. He has once said that if the angel Gabriel had come down to lead the colonies through the Revolution and into a successful federation, there would have been no credit for the Americans: the wonderful thing was that mortal men with human characters and failings accomplished so great a work. It is this wholesome attitude of criticism, of taking great Americans for what they were and did, and not for what they were supposed superhumanly to have done, which has probably caused some assertions that von Holst is unfriendly to American institutions. On the contrary, in his own country he is accused of an undue appreciation of and fondness for the United States. That the habit of philosophic examination of character does not prevent admiration for great men, is shown by his clear and sympathetic account of Lincoln's attitude on the slavery question and of his debate with Douglas. He recognizes in him the prophet of the epoch, the one man who could clearly see and express the inevitableness of the division over slavery. It is a tribute to the man who is more and more recognized as one of the two greatest Americans — and not the lesser.

The volume is by no means biographical; and the central and dominant idea is, as in others of the series, the essential contradiction of free institutions and slavery — the necessity that the Union should be all free or all slave. The thought is not original with von Holst; but he has so urged it and insisted upon it, that the idea is entering text-books and infiltrating into the schools. Like all dominant ideas, it often carries him too far. However true it may be that slavery affected all other

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questions, and was itself the great and insoluble question, tariffs, land-grants, homestead bills and other measures were carried through on other grounds, and they also are evidences of development. As in the other volumes, there is one chapter devoted especially to the discussion of the elements of the slavery struggle and the differences between the North and the South. The political history may be and probably will be worked over hereafter by other hands in briefer and more direct form; these chapters will remain the standard authority upon the political results of slavery. The weakening influence of slavery was seen in its fall; the causes of that weakening influence are here set forth in permanent form. The author has a strong bias: he thinks slavery wrong and sympathizes with its opponents; he exults not only in the triumphs of the champions of freedom, but also over the mistakes and errors of the friends of slavery. This bias is very distinctly traceable in his rhetorical indictment of the Dred Scott decision:

> How could the opposition fail to look upon the judgment, legally as an invalid usurpation and as a perversion of the law, never to be recognized, politically as an absurd and bold assumption, and morally as an unparalleled prostitution of the judicial ermine?

It is impossible for any man to discuss the slavery question without bias: von Holst does not write judicially, but he does write in sympathy with the spirit of the American people. The fact that he is a foreigner and of foreign parents may perhaps prevent him from appreciating the difficulties through which the slavery question was worked out. In his effort to judge American statesmen as they were, he may sometimes apply to them the standard of a later age than their own. But the chief aim of the present volume is to trace the progress of that which we recognize now as the true and free spirit of America; and the book is one to make Americans more proud of a nation which has had the moral force to free itself of an immoral institution.

ALBERT BUSHNELL HART.

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REVIEWS.

The Negro in Maryland: A Study of the Institution of Slavery. By JEFFREY R. BRACKETT, Ph.D. (Johns Hopkins University Studies. Extra volume VI.) Baltimore, N. Murray, 1889. — 8vo, 268 pp.

Notes on the Progress of the Colored People of Maryland since the War: A Supplement to *The Negro in Maryland.* By JEFFREY R. BRACKETT, Ph.D. (Johns Hopkins University Studies. Eighth Series, VII, VIII, IX.) Baltimore, Publication Agency of the Johns Hopkins University, 1890. — 8vo, 96 pp.

The Plantation Negro as a Freeman: Observations on his Character, Condition and Prospects in Virginia. (Questions of the Day. No. LVII.) By PHILIP A. BRUCE. New York and London, G. P. Putnam's Sons, 1889. — 8vo, ix, 262 pp.

The Negro Question. By GEORGE W. CABLE. New York, Charles Scribner's Sons, 1890. — 12mo, vi, 173 pp.

In striking contrast with the greater number of books on the negro, Dr. Brackett's volumes are devoted to an examination of actual conditions within a territory small enough to be exhaustively studied; and his aim is to present clearly all the facts rather than to make deductions.

In the introduction to *The Negro in Maryland,* Dr. Brackett refers very briefly to the rise and decline of enslavement for debt or by capture in war and the custom of ransom; to the strange mixture of religion and thrift in the servitude to which the Spaniards reduced the negroes and the Indians in trading in Africa and America; and to the beginning of negro slavery in the western world. From the settlement of Maryland by Lord Baltimore in 1634 until the early part of the next century, Indians captured in war or convicted of crime were often enslaved for years or for life. And white slaves, or "servants," as the laws styled them, were then and long afterwards very numerous; their service being the result of crime or voluntary contract and generally lasting for a fixed term. In the 122 pages of the third chapter are condensed in logical order all the facts touching the origin and growth of negro slavery in Maryland: the regulations and legislation that governed it; the changing restrictions upon immigration and emigration of slaves into and out of Maryland; the slave's civil rights; the provisions of state and local law to prevent his escape by flight or servile insurrection; the criminal

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code with special references to slave offenders; the history of "sale South" and of the general enforcement of the laws affecting slaves and property in them, with all cognate questions. Manumission is treated with the same thoroughness, from the first act upon this subject, in 1752, to the last in 1864. The final chapter of this interesting study is upon "The Free Negro." His lot was in many respects a harder one than the slave's. The laws covered almost every point in his daily life, and were designed to render his residence in Maryland as uncomfortable to him and as vexatious to the general public as possible. The immigration of free negroes was prohibited and their emigration harshly encouraged. Joel Chandler Harris, in *Free Joe*, vividly portrays the result of the legislation which is here detailed. Not only are all enactments of the legislature upon these subjects set out chronologically and with great fulness of detail, but the journals of the two Houses, the records of the courts and the current newspapers have been searched for evidence and illustration of the actual administration of the laws and the prevailing popular opinion.

That Dr. Brackett's work is systematic and exhaustive is a great merit; but these qualities alone do not make a "study." The materials are all here, but undigested; in order, but not vitally co-ordinated. A "study," like a true book, is a finished product ready for consumption, and not a collection of the raw materials of intellectual subsistence. Without a succinct and flowing narrative of the salient facts and lucid generalizations from them, the book cannot reach the reading public. With it the volume might be made as interesting and valuable to the general reader as it is now to the student of politics.

Happily this criticism does not apply with equal force to Dr. Brackett's *Notes*. They are delightfully simple and unpretentious, yet concrete and scholarly. To the best of my recollection this is the first, or at least the most satisfactory, effort ever made to gather and arrange the statistics of an entire state on almost every feature of the negro's daily life. Dr. Brackett wisely devotes small space to politics. The political negro can best be studied in the history of states farther south. Yet enough is given in the *Notes* to show clearly that he has been the spoil of the politician rather than a voter able to demand and command his rights. The clear statements of fact in regard to the Maryland negro's ideas and habits touching the acquisition of property, protective unions for laborers, manual and intellectual schools, newspapers, religious work, literary and benevolent associations, secret societies, social relations, professional life, jury service *etc. etc.*, show the folly of reasoning by mere theory — which is also likely to be by prejudice. Here are the records of what Maryland negroes have done or failed to do. Our author seems to be so conscientious with his facts that no honest reader

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can fail to draw for himself the conclusion that, so far as Maryland is concerned at least, the heroic remedies of a flood of political power and a deluge of education are worthy only of political quacks and fanatics. Such measures are not, neither can they construct, a stable civilization. The elevation of the negro — which means merely civilizing him — is like the erection of a brick building: there must be a solid foundation, and the materials must be such and in such relations that they will adhere, — else they will soon fall into débris. Lacking these requisites, negro civilization in Mississippi, Louisiana and South Carolina became human débris. Dr. Brackett's *Notes*, without either argument or drawing of conclusions, shows the best way to solve the problem of civilizing the negro.

The only safe method of treating a question obscured by prejudice, passion and half-knowledge is the historical one. Mr. Bruce is evidently a native Virginian; his memory does not recall the days of slavery, and his observations refer especially to "that portion of the Old Dominion which lies between the James River and the northern boundary line of North Carolina." He discusses the important subjects of parent and child, husband and wife, master and servant, blacks and whites, the negro and the commonwealth, religion, superstition, mental and moral characteristics, the negro as a laborer and mechanic, and others of a kindred nature. Being of the later generation, he plainly struggles to see and tell the truth in the light of *post-bellum* events; but born amid the ideas of a former period and never having grouped facts historically and reasoned inductively, the result is to be regretted rather than condemned.

Dr. Atticus G. Haygood — probably the bravest and most valuable friend the negro has in this generation — asserted the plain but, to many of his fellow-Southerners, the startling truth:

> In its essential characteristics the human mind is the same in every race and in every age. When a negro child is taught that two and two are four he learns just what a white child learns when he is taught the same proposition. . . . There is no more in this statement to excite prejudice than if one should affirm that a negro boy ten years old weighs as much as a white boy ten years old, or that he can jump as far.

Mr. Bruce reverses this course of reasoning. He believes that because the negro race is inferior to the Caucasian, every negro is and must forever remain inferior to his white neighbor, *i.e.* that the general traits and immoralities of the negro race are the necessary possession of every negro. The spectres of social equality, political superiority and their kindred horrors all seem to haunt him. How do these delusions work themselves out? Most disastrously to the honest purposes of our author. The whole category of human failings, common the world over to poor

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and semi-civilized peasants, are charged up as the characteristics of the ex-slave along with his few special or serious weaknesses. What is the conclusion? What can it be from such an outrageous but common premise? Ah, possibly education may be of some assistance in a few instances, but, alas, education seems to turn the negro's head without training his hand; liberty has loosened the restraints and given rein to immorality and idleness; freedom of labor has merely bred a license of debt or shiftlessness. Such is the gist of Mr. Bruce's philosophy. In his two hundred and sixty pages there are not twenty hopeful sentences. He seems to be entirely blind to the prosperity, resources and education of many of the negroes in such cities as Charleston, Washington and Baltimore.

Mr. Cable, although a native Southerner and an ex-Confederate, starts with the plain proposition that the negro merits the same civil rights as the white man. Having fortified his position by expelling all fear of social equality, he attempts to put political rights on the same basis. Here his argument begins to grow weak; for in his successful effort to dispel the delusion that because all negroes are not equal to Caucasians, none of them can be, he is led to believe that because some may be, all are. This is a direct departure from the teachings of the negro's history since the war. He sees nothing peculiar about the Reconstruction state governments. The main cause of their fall was "the corruption of the ballot." Can he be the one person who has never heard of eight years of legislative and administrative corruption in South Carolina — and almost as many in Mississippi and his native state of Louisiana — before the corruption of the ballot was seriously considered? He sees no difference in political science between "our fathers" and the white knaves and black thieves who looted the state and county treasuries of the states named; for he says:

> For instance they [our fathers] had to learn state and national banking and general public financiering; and they learned them in a series of gigantic blunders in comparison with whose devastating results those of the Southern Reconstruction governments of 1868–77 sink into insignificance. In other words, they had to learn how to vote wisely; and no people ever learned how to vote except by voting. [p. 121.]

There is a strange mixture of sophistry, fanatical enthusiasm and sound, practical reason in this second volume which Mr. Cable has published on the negro question. The effect of these efforts has been so to enrage the South without particularly enlightening the North (except in regard to the convict-lease system), that we doubt if his very sincere and self-sacrificing discussions have really added much to the solution of the problem. For the good of the cause we cannot but regret that Mr. Cable did not devote this labor to a minute exposi-

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tion of the social and political action and progress of the negro in Louisiana during all or a part of the quarter of a century of his freedom. Such a work would have no suggestion of special pleading, nor would it enrage the persons whom it is important to convince. It would have lasting value at every stage of the development of this troublesome question.

FREDERIC BANCROFT.

The Union-State: A Letter to Our States-Rights Friend. By JOHN C. HURD, LL.D. New York, D. Van Nostrand Co., 1890.—135 pp.

Dr. Hurd's views on the constitutional law of the United States are not unfamiliar to students of American history. He has ably presented them in his *Theory of our National Existence* and other works. The occasion for the present pamphlet was a correspondence with an advocate of the right of state secession. As a central point in the discussion of this right appears the historical question as to the actual political status of the thirteen states at the time when the constitution was proposed for ratification by them. A considerable part of the volume is devoted to a presentation of facts from the records of the colonial and continental congresses, illustrating the views which prevailed at the time of the separation from the mother country. The study is an interesting and valuable one.

Dr. Hurd is no believer in state sovereignty. By sovereignty he understands "the existence of *will* and *force* directed to a certain political end." The will and force which secured independence from Great Britain he conceives to have been manifested not by any single colony for its own people and territory separately, but by a number of states together and for their joint territory and population. Upon the success of the war, sovereignty vested therefore not in any single commonwealth, but in the union of all. A federal state, or as the author prefers to say, a union-state, came into existence. Dr. Hurd considers that the reciprocal action of the Continental Congress and the voting peoples of the various colonies anticipated the Declaration of Independence, and also

> indicated a consciousness that the exercise of any independent jurisdiction within any colony or province could rest only on a single will and force manifested in the common action of thirteen pre-existing political personalities which had never possessed sovereignty before that time, either for local government or for national existence.

Starting from this historical conception of a sovereignty vested by fact in the states united, the author can find no basis for recognizing at any time any sovereign power in any state separately. The express

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declaration in the Articles of Confederation that each state was sovereign has to him no force as against the *fact* to the contrary. And the absence of such a declaration in the Constitution of 1789 is of no significance one way or the other. Sovereignty is a conception wholly apart from the form and powers of government, and the latter alone are the subject-matter of a constitution. Such a theory obviously leaves no room for a constitutional right of secession. The union-state was established for the whole population and territory included within it. Whatever rights any one of the constituent states possessed were but incidental to membership in the union. Renunciation of such membership would be *ipso facto* the disappearance of the state. So Dr. Hurd holds that Rhode Island and North Carolina, if they had persisted in their refusal to ratify the Constitution of 1789, far from assuming the rank of independent nations, would merely have become subject territory of the union-state.

The author thus disposes of state rights and state sovereignty; but he has a very serious grievance against recent writers of a strongly nationalistic type. While he will not see the union-state separated into lesser sovereignties, no more will he see the individual states absorbed into the greater unit. The state which resulted from the revolution was federal, not national. Its essence was in the association of thirteen political corporations, not in the aggregation of the human units contained in these corporations. The author has no patience with the rather fashionable theory that sovereignty *de facto* vested in the Continental Congress by virtue of its actual exercise of governmental functions. Such a view, he thinks, confuses the sovereign with its agent. He can see no ground for the assertion that under the Confederation the several states usurped sovereignty from the people, who by peaceful revolution regained it under the Constitution of 1789. No single state ever possessed sovereignty, original or usurped, and the people of the United States as a whole never appears in history as a political fact. The Constitution of 1789, like the Articles of Confederation, was a frame of government resting for its authority upon the collective will and force — the sovereignty — of the states which united in its ratification. The question settled by the Civil War was simply one of fact, *viz.* whether the states voluntarily remaining together and composing the continuing union-state had the will and force to maintain the former dominion over all the territory and population pertaining to it.

Without discussing here the difficult points in the author's theory — points with which our history since 1861 fairly bristles — it must be remarked that Dr. Hurd's antipathy to the advocates of the national theory leads him at times into misconceptions of their views. He refuses to distinguish between political and legal sovereignty. His own

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doctrine refers wholly to the former, but he occasionally administers a castigation to a supposed adversary whose arguments are concerned as exclusively with the latter. He is right in seeking to limit the application of the term to a single conception, but, until the terminology of political science is much more perfect than at present, some allowance must be made. The embodiment of superior force which lies back of all political organization is no doubt the ultimate sovereign. But what shall we call that supreme legislative authority which must exist somewhere in the organization as completed? The sovereign which makes the constitution of the United States possible is, according to Dr. Hurd, such states in combination as have the will and force to maintain the union. Two states sufficiently powerful would seem to be enough under this definition. Yet, under the existing constitution, no change in the fundamental *law* of his union-state can be made save through the action of more than thirty. New York and Pennsylvania might preserve the union by force; but three-fourths of forty-four commonwealths must work together to strengthen the legal ties that bind it. Obviously there is a marked distinction between the political and the legal sovereign. Dr. Hurd seems to think that every one who speaks of a sovereign other than the political must mean the government, and hence must fall into a very silly confusion. His error is in the insufficiency of his own analysis, which fails consistently to discriminate between the power which makes any government possible and that which determines the form and authority of a particular government, — between the sovereignty *back of* the constitution and what may be called the sovereignty *in* the constitution.

With this distinction in mind Dr. Hurd would not have so much difficulty with the theory of revolution in 1787. He will hear of "revolution" only when there is a change in the political sovereign; but some at least of the nationalistic writers apply the term to a change in the legal sovereign, and such a change undoubtedly occurred. Under the Articles of Confederation an amendment of the supreme organic law of the union-state required the action of every state; under the new constitution, the action of three-fourths was made sufficient. Many other of the barriers that separate our author from the national school disappear under the solvent power of this distinction. In fact, the essential principle of his theory and theirs is the same, *viz.* the continued existence of a single political entity in the region separated from Great Britain by the Revolutionary War. He calls this entity a union-state; they call it a nation. Another might say that, before 1865, the former name was more accurate; after that date, the latter.

WM. A. DUNNING.

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The Veto Power. Its Origin, Development and Function in the government of the United States (1789–1889). By EDWARD CAMPBELL MASON, A.B. [Harvard Historical Monographs. Edited by Albert Bushnell Hart, Ph.D. No. 1.] Boston, Ginn and Company, 1890. — 8vo, 232 pp.

Mr. Mason has made a valuable contribution to our constitutional history. His first chapter, entitled "Genesis of the Veto Power," is perhaps a trifle meagre when compared with the very full chapters that follow; but this deficiency must, it seems, be set down to the exigencies of space which deprived us of the contemplated chapters on the workings of the veto in the states and in modern constitutions.

The next three chapters discuss the entire series of Presidential vetoes, and the basis of classification is found in the fact that "all measures of Congress relate either to the form of the government or to the exercise of its powers." Accordingly the second chapter deals with vetoes affecting the form of government (a limited class); the third, with those affecting the distribution of powers, and the fourth, with those affecting the exercise of powers. The various subdivisions adopted cannot be noted, but they are indicated in the headings of the chapters and can be easily followed.

In the fifth chapter, entitled "Constitutional Procedure as to Vetoes," Mr. Mason, with good reason, controverts Mr. J. H. Benton's proposition that the objections assigned must be objections to the intrinsic merits of the bill. The sixth and final chapter treats of the political development of the veto power. Then follow six appendices, three of which are by the editor of the series. These add much to the value of the treatise, especially the first, which gives a chronological list of all (433) the bills vetoed from April 6, 1789 to March 4, 1889. Ten of these vetoes had been overlooked by the Senate Committee on Printing in their report of 1886. A good index concludes the book, and the proof-reading has been careful, only a few unimportant mistakes having been noticed.

Mr. Mason's treatment of the vetoes discussed is clear and to the point. His freedom from political bias is shown everywhere, especially when he has to deal with the vetoes of Jackson, Tyler, Johnson and Cleveland. His researches have been thorough and the conclusions he has drawn from them are worthy of attention; but only two can be quoted here:

> The record forcibly demonstrates the wisdom and foresight of the founders of the constitution, in their expectation that the veto would be an efficient instrument in maintaining the balance of power between the executive and legislative departments.

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It may be said that the veto has been used to prevent Congress from unduly extending its authority; that in almost all cases it has been used wisely; and that it has failed only in those cases in which Congress has been supported by a strong public opinion, or in which the majority of the people took no interest.

In conclusion the hope may be expressed that the "irregular intervals" at which this series is announced to appear may not turn out to mean infrequent intervals.

W. P. TRENT.

Essays in the Constitutional History of the United States in the Formative Period, 1775–1789. Edited by J. FRANKLIN JAMESON, PH.D. Boston and New York, Houghton, Mifflin and Company, 1889. – xiii, 321 pp.

The essays comprised in this volume all deal with some phase of the social or political life of the United States during the epoch which the editor calls the formative period (1775–1789). They seek to exhibit in various organizations the workings of that national and humanitarian spirit which is embodied in the Declaration of Independence, the Ordinance for the Government of the Northwestern Territory and the Constitution of 1789. Mr. Guggenheimer's essay on "The Development of the Executive Departments" forms the exception to this statement. It is a careful and thorough study in the history of administrative law. The author takes up the executive departments *seriatim* and by comparison shows how all follow the same law in the process of the separation of the executive from the legislative. The article is somewhat disfigured by an annoying flippancy of tone. It is based on original research, and the author has evidently convinced himself of the correctness of his statements; still, the reader would like to be acquainted with the reasons for some of them.

The first essay, by Professor Jameson, deals with the predecessors of the present federal judiciary: the tribunal for territorial disputes; the commonwealth courts appointed to try charges of piracies and felonies committed upon the high seas; and the court of appeal in cases of capture. It contains a very interesting summary of the origin, history and procedure of these courts; but it is unfortunately brought into comparison with J. C. Bancroft Davis's longer and completer essay on the same subject, contained in the centennial volume of Supreme Court reports. "The Movement toward a Second Constitutional Convention" (Professor Edward P. Smith) is merely a re-threshing of straw already threshed by Bancroft, Curtis and Fiske. Far more original are the fourth and fifth essays. The former, by Professor Wm. P. Trent, treats of the movement toward a national organization in ecclesiastical bodies. The author traces this tendency in each of the several denominations

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established in the United States and indicates the reciprocal action of these national movements in political and ecclesiastical affairs.

In "The Status of the Slave," Dr. Jeffrey R. Brackett examines the legal condition of slaves, indentured servants and freedmen in each of the colonies, and shows the effect thereon of the humanitarian spirit already referred to. He examines first the police laws enacted to protect society against servile insurrections; next, the incapacity of slaves to contract; then, the adjective law of servile persons, the peculiar organization of the courts established to try offences committed by them, and their disabilities in giving testimony, — contrasting the severity of the penalties annexed to crimes and misdemeanors committed by them, with the lightness of the punishment for offences against them. He then takes up the subject of manumission and exhibits the difficulties attending it because of administrative and political obstacles. Finally, he shows how these obstacles melted away in the Eastern and Middle states under the heat of the spirit of liberty and equality, but how the Southern states were little affected thereby. This essay goes far to demolish the popular belief that these latter commonwealths were on the high road to emancipation when the invention of the cotton-gin checked them. Dr. Brackett's paper is well written, and like the others is based on a careful examination of original records. All four of these articles show how much stronger was particularism south of the Potomac than north of it.

Taken as a whole, the volume is highly creditable to its editor and furnishes plenty of ammunition for use against Gladstone's "theory of inspiration" of the constitution, — the target against which Professor Jameson has directed his guns.

ROBERT WEIL.

History of the United States of America during the first administration of James Madison. By HENRY ADAMS. New York, Charles Scribner's Sons, 1890. — 2 vols., 428, 488 pp.

Madison was in more senses than one the residuary legatee of Jefferson's policy. As a member of Jefferson's cabinet and the President's most trusted confidant, he had largely assisted in framing the measures intended to carry out that policy, and commercial restriction and embargo were favorite weapons with him to attain its end. In Gallatin he had the ablest member of the former administration, and until Monroe entered his cabinet, the ablest of his own; but in his other appointments he obtained gross incompetency and even active intrigue against himself. He was President and secretary of State, until Monroe was summoned to fill the latter position, and at the outbreak of the war of 1812, he was President and secretary of War and of the Navy, with

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Jefferson as an adviser. Under such disadvantages was he called upon to unravel the knotty skein of foreign and domestic policies which he and his former chief had entangled.

His efforts are described by Mr. Adams in the same clear, nervous and concise manner as was applied to Jefferson's rule, and his blunders are mercilessly detailed. The advocate becomes more apparent in the author. The progress of the Jefferson-Madison — the so-called Republican — party, from the doctrines with which it entered into control of the government to a line of policy distinctly that of the Federalists, supplies the best possible defence of John Adams and the principles of 1798; and the fact that the administration of Adams need not be described, with that strong and passionate personality of his that led him to commit what his party interpreted as blunders, is of great advantage to his defender. In showing that Madison in 1812 resorted to the same instruments that John Adams used in 1798, the writer would demonstrate that Adams was right; and this object, indeed, is attained.

The insolence of Canning and the restriction policy of Perceval were rampant at the opening of Madison's administration; and it is the author's task to show how these features of British policy so acted upon America as to produce a war at the very time when they were about to be supplanted by a spirit of courtesy and concession. In arriving at this result, blunders must have been committed. The curious engagements made with the British minister, Erskine, the prompt disavowal of them by the English cabinet and the treatment of Erskine's successor, Jackson, were steps in the development of such a paradoxical situation. But it was in dealing with France, or rather with Napoleon, that the real error was committed; for Madison insisted that the blockades, embargoes and restrictions imposed by that autocrat on neutral commerce were repealed, and maintained this position in the face of a wholesale seizure and condemnation of American vessels wherever Napoleon could lay his hand upon them. With the facts before it, the English government was right in denying that such a repeal had occurred; and at the very time when Russia and Sweden were preparing to defend neutral commerce from the lawlessness of the French Emperor, Madison found himself opposed to Russia, at war with England and apparently in close alliance with Napoleon. In tracing out the intricate paths of diplomacy which led to such a situation, Mr. Adams's methods of writing history show to advantage.

As clearly are pictured domestic concerns. The cabal against Gallatin; the introduction of Monroe into the cabinet and his military aspirations; the weakness of Congress and the unprepared condition of the country for a war; the rise of the younger statesmen, like Clay and Crawford; the inefficiency in army and navy management; the occu-

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pation of West Florida by an act that could hardly be defended on any ground save ambition or land hunger; the first application of the previous question in Congress; the fiscal policy of Gallatin; and the Indian campaign of Harrison, with the failures on the Canadian border, — all are told with a spirit and an accuracy that leave little to be desired, and only confirm the excellent impression made by the earlier volumes.

WORTHINGTON CHAUNCEY FORD.

Preussisches Staatsrecht. Von CONRAD BORNHAK. Dritter Band. Freiburg i. B., J. C. B. Mohr, 1890. — 710 pp.

This volume finishes the work on the public law of Prussia begun by Dr. Bornhak in 1888. The first of the three volumes of which the work consists is devoted to constitutional law in the sense given to it by German jurists; the other two volumes to administrative law. These are published separately under the title of *Preussisches Verwaltungsrecht.* The first two volumes have already been noticed in the POLITICAL SCIENCE QUARTERLY. It remains only to speak of the third volume which has just appeared. This consists of a detailed exposition of the particular branches of Prussian administrative law, *viz.* foreign affairs, military affairs, the administration of justice, internal affairs and the finances. Wherever the imperial legislation has modified Prussian public law or has circumscribed the competence of the Prussian legislature, the modifications are not only noticed, but are quite elaborately treated; with the result that the book is really more ambitious in purpose than its title would indicate. It is a treatise on Prussian administrative law, and on imperial administrative law so far as that affects Prussian administrative law. Especially interesting is the *Anhang* devoted to the recent imperial socialistic legislation, in which is contained a full description, from the legal rather than from the economic point of view, of the workingmen's insurance legislation.

Another interesting chapter is that devoted to the budget. The consequence of a failure on the part of the legislature to vote the budget is discussed at great length and with much ability. The subject is one not only of theoretical but also of great practical importance, the uncertainty of the constitutional provisions relative to it having led to the great constitutional conflict of 1860–65. Dr. Bornhak, while approving the general course of the ministry on this occasion, is of the opinion that the method adopted to attain the desired end was not the right one. He thinks that the provision of the Prussian constitution which permits the executive, in case of unexpected conditions, to issue what are termed *Notverordnungen* was a sufficient authorization to it to order the necessary expenses of the government to be paid. This view in-

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volves a very wide interpretation of the power granted, and is not held by Prussian jurists generally. It is, however, fully in accord with the general monarchical and conservative spirit which pervades all Dr. Bornhak's work. From the juristic point of view it would seem to be more capable of justification than the view of Gneist. The latter considers it to be the first duty of the crown to carry on the government. He is of the opinion that if the legislature or if one house thereof refuses to vote the budget, the executive may not on that account allow the public weal to suffer, but must order the payment of all necessary expenses, trusting to obtain indemnity from the legislature in the future. Such a theory is not really juristic at all. It transcends all legal bounds. It solves the problem rather by political science than by law. In this matter Zorn and Jellinek seem to have taken the right position. They frankly acknowledge that the law cannot solve the question, but that it must be solved by political science. But whoever may be right, Dr. Bornhak's attempt at a legal solution is both ingenious and interesting, and is not incapable of justification.

The book is provided with a full index of the entire three volumes. It completes without a doubt one of the most important works on Prussian public law which have recently appeared, and maintains the same high standard of excellence which is characteristic of all Dr. Bornhak's writings.

F. J. G.

Commentaries on the Law of Municipal Corporations. By JOHN F. DILLON, LL.D. Fourth edition, thoroughly revised and enlarged. Boston, Little, Brown & Company, 1890. — 8vo, clxxiv, vi, 1516 pp., bound in 2 vols.

From its first appearance, eighteen years ago, Judge Dillon's work has taken a foremost place in American legal literature; and in the particular branch of which it treats, it has occupied the field without a rival. Considering the growing importance and the intricate nature of the subject, the fact that no other special American treatise on municipal corporations has come into existence is itself strong evidence of the thoroughness with which the author has performed his task. Although but nine years have passed since the publication of the third edition, yet so rapid, almost portentous, has been the development of municipal life, so numerous are the recent statutes, reported decisions and constitutional enactments relating to cities, so deep and widespread is the interest aroused in every phase of municipal history and administration, that an entire revision has for some time been needed. And I feel sure that neither the lawyer nor the general student will be disappointed in the present edition. It is a revision in the best sense of the word.

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Every chapter — nearly every paragraph — shows abundant evidence of conscientious pruning or elaboration by the author's own hand. By these alterations the bulk of the text has been expanded from 1080 to 1338 pages; while, in addition, the index has been more than doubled, and the useful table of cases cited has been extended by fifty-three pages in double column. The improvements are perhaps most noticeable in the chapters on Contracts, Eminent Domain, Streets, and Municipal Taxation and Local Assessments. Here the author's characteristics are well represented: clearness of style, judgment in the selection of cases for special discussion, careful definition supported by forcible description, and wealth of citation and illustration in the marginal notes.

The student of historical and political science, it must be confessed with regret, has learned to expect little aid in his department from law-writers, though there are, of course, honorable exceptions to the rule. Too often the credulous or uncritical statements of Blackstone and similar commentators are repeated, while the researches of modern scholars into the genesis and development of legal institutions are almost wholly ignored. It is therefore very gratifying to be able to commend Judge Dillon's book in this regard. Nowhere does the present edition show a more marked improvement over the preceding than in the discussion of questions relating to municipal administration. The author's sound views as to the defects in our municipal organization and as to the character of the reforms needed can scarcely fail to exert a good influence through the bar upon American legislation. Thus he enforces the lesson which we may learn from a study of the municipal institutions of Prussia, whose

> scheme of organization gives to the municipality very general powers, with the limitation on the exercise of many of them, that they shall be approved by some superior administrative officer of the central government. [But] this administrative control over the acts of the municipality does not in practice seem to be carried to so great an extent as the control actually, although irregularly, exercised by the state legislatures over our American municipalities; so that . . . the Prussian cities in fact enjoy, it is said, a greater degree of freedom from central interposition than with us [page 14].

Again, the danger that results from vesting

> unrestrained power in the central legislative authority to bestow valuable franchises affecting cities and property therein, without the consent of the municipal authorities and of the property owners,

is pointed out; and the recklessness with which such franchises are squandered upon private companies by American cities is denounced.

> Administered on business principles, a city ought to derive large revenues from the use of wharves, from railways occupying streets with their tracks, from gas, water and other companies to which are given the right to lay mains in the streets and public places [page 30].

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Further on, he emphasizes the significant fact that

> in many of the more important aspects, a modern American city is not so much a miniature state as it is a business corporation, — its business being wisely to administer the local affairs and economically to expend the revenues of the incorporated community [page 34].

And he endorses the view that "more power and more responsibility" should be vested in the mayor or executive head (page 31).

What is especially noteworthy in this connection is the author's familiarity with the lay literature of his subject. The best and most recent writers are usually cited. The marginal notes are rich in material which will be of value to the non-professional reader. The historical sketch is in the main good though too general, and it contains one or two sections which should have been subjected to thorough revision. Thus the account of the civic communities established by Rome (pages 4, 5) is inadequate. The authoritative literature is not mentioned, and some of the statements are misleading. Similar objections may be made to the passage (pages 15–16) on the English towns at the time of the conquest. The author would have done well here had he accepted the guidance of Bishop Stubbs, with whose writings he shows elsewhere that he is acquainted. But to lay too much stress on possible shortcomings such as these would be ungrateful as well as unfair, for the author has warned us that he is writing "strictly for the practising lawyer," and does not purpose giving "a detailed account of the origin and rise of cities and towns." Judge Dillon's treatise is a credit to American scholarship, and must remain indispensable to every student of municipal institutions.

GEORGE E. HOWARD.

De l'Exécution des Jugements Étrangers dans les Divers Pays. Par CHARLES CONSTANT. Paris, G. Pedone-Lauriel, 1890. — 207 pp.

This is a second and very much enlarged edition of a small work published in 1883, which was so well received that it was soon out of print. The present edition forms the twenty-ninth number of Pedone-Lauriel's *Bibliothèque Internationale et Diplomatique*, and constitutes an excellent manual on the execution of foreign judgments in various countries. A larger space is naturally given to the law on that subject in France than to the law of any other country, but a general and instructive statement is afforded of the rules that obtain in the United States, England, Germany, Austria-Hungary, Belgium, Brazil, Bulgaria, Chili, Denmark, Egypt, Spain, Greece, Hayti, Italy, Luxemburg, Mexico, Monaco, the Netherlands, Peru, Portugal, Roumania, Russia, Servia, Sweden and Norway, Switzerland and Turkey. From this list it is apparent that the work of M. Constant is much more comprehensive in respect to the

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subject of which it treats than the chapters on the execution of foreign judgments found in the books on the conflict of laws.

It is scarcely necessary to say that when we speak of the execution of foreign judgments, we mean judgments in civil and not in criminal cases. It is a universal principle that the authorities of one country will not enforce the criminal sentences pronounced by the tribunals of other countries; but when we enter the domain of civil rights and remedies, we discover a totally different rule. Here national boundaries are in great measure obliterated. National policies and national jealousies disappear, and each nation lends its aid to administer justice as between man and man in respect to their private transactions. If, for example, a suit be brought upon a contract which was made and was to be executed with reference to a foreign law, the court will apply and enforce that law as the law to govern the case. It was somewhat broadly declared by Lord Stowell in the famous case of Dalrymple *vs.* Dalrymple, which involved the question of the validity of a Scotch marriage, that where a foreign contract was to be construed and enforced it was the duty of the court to ascertain what the foreign law applicable to it was, and that the law of England, having furnished this principle, altogether withdrew, while the foreign law then became the law of England for the purposes of the case.

This principle of the recognition by each country of the laws of other countries in civil matters really lies at the foundation of the enforcement by the authorities of one country of the civil judgments of the tribunals of another. Hence it has been declared in England that a foreign judgment in respect to a matter properly governed by the law of England would not be enforced in that country, if the foreign tribunal refused to apply the English law. On the other hand, the English law having been applied, it has been held that the English courts would enforce the judgment, although the foreign tribunal misconstrued the law. Such was the decision of Mr. Justice Sterling, in 1887, in the case *In re* Trufort. The same rule had already been laid down in two earlier English decisions, namely Castrique *vs.* Imrie, L. R. 4 H. L. 414, and Godard *vs.* Gray, L. R. 6 Q. B. 139.

It would far exceed the space allotted to a book review to attempt to disclose the rules observed and the methods pursued in various countries in the execution of foreign judgments. In some instances the subject is regulated by treaty. M. Constant informs us that France has such treaties with Austria, Germany, Italy, Russia and Switzerland. These conventions, however, are not so important for us as the broad doctrines which are generally recognized and administered. It is generally stated that, to render a foreign judgment effective, it must appear that the court had jurisdiction of the parties and the subject-matter. This is fundamental. A judgment rendered without jurisdiction is in strict right no

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judgment at all, and it is obvious that the jurisdiction must extend both to the parties and the subject-matter. The judgment must also be final, and, if *in personam* and for a pecuniary claim, must be for a fixed sum. In many countries, as in Germany, Austria-Hungary, Chili and others, it may also be necessary to show that reciprocity is observed in the country from which the judgment comes. This is expressly provided in article 661 of the German code of civil procedure, which was promulgated in 1877; and where there is no express provision on the subject it would not be strange if the courts should refuse to recognize judgments proceeding from countries whose tribunals refuse to execute foreign judgments. Such a case would fall within the principle of the declaration or suggestion of Lord Hatherley, above mentioned, that the English courts would not enforce a judgment respecting a matter governed by English law, if the foreign tribunal refused to apply that law.

Growing out of the requirement that, where a foreign judgment is to be enforced, the court which renders judgment must have jurisdiction of the parties, the question frequently arises whether the defendant has properly been served with process. It is a general principle in such case that, except as to citizens or domiciled persons, the process of the courts can have no extra-territorial effect; and it has been held both in the United States and in England that the extra-territorial acceptance of service otherwise invalid is insufficient. It would be manifestly unjust and inadmissible that persons against whom demands are made should be required to answer wherever it may suit the convenience or caprice of the plaintiff to bring his action. Such a rule would be intolerable. So sound and necessary is the requirement of service within the jurisdiction, that it has been enforced as between the states of the United States almost as strictly as between nations wholly foreign to each other. The abuses to which a relaxation of the rule would give rise have been amply illustrated in the matter of divorce. The theory on which extra-territorial service in such cases has been sustained is that it would defeat the object of the statutes to permit a person to escape their operation by leaving the jurisdiction. On the other hand it may well be asked whether, by recognizing such service, as by a notice in some obscure newspaper or by a communication mailed to a supposed post-office address, the statutes have not often been converted into instruments of fraud, by being made to serve the purposes of dishonest action on one side or of collusion. It has been strongly advocated by high authority that foreign divorces, where the service of process is by publication, should always be treated as having no extra-territorial effect as to a defendant domiciled in another jurisdiction, unless there be satisfactory proof that the whereabouts of such defendant could not after diligent search be discovered.

JOHN BASSETT MOORE.

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History of the New York Property Tax. An introduction to the history of state and local finance in New York. By JOHN CHRISTOPHER SCHWAB, Ph.D. Publications of the American Economic Association, Vol. V, No. 5, 1890.— 8vo, 108 pp.

The history of American local finance has been almost an untrodden field. Although several students are now engaged in working up various parts of the subject, almost nothing has been published. It is therefore with a friendly recognition that we must greet this attempt to trace the history of the property tax in New York.

The monograph, which is a slightly enlarged translation of an essay originally printed in German, is written on the whole with fidelity and care. Extended references are given in the foot-notes to the chief published and manuscript material. Very little attempt, however, is made to present anything but a consecutive narrative of the facts. In the few cases where Dr. Schwab tries his hand at analysis, the result is not always good. Thus one of the main points of the monograph is that the property tax in New York owes its origin to English and not to Dutch precedents. In order to prove this statement the author gives us a slight account of the English tenths and fifteenths, which he correctly assumes to have been general property taxes. But Dr. Schwab errs in believing that this general property tax was peculiar to England. It was found all over the continent, in Holland as well as in the other countries. In Holland during the middle ages it was known as the *schot*, or tax on the *bezittungen*, levied at irregular intervals. Especially from 1653 on it became a regular state tax levied on all property in general. And it is to be noticed that when the Dutch governor gave his reasons for imposing a general property tax "on estates and means" in 1674, he added the words, "as is practised in the Fatherland in such and similar circumstances." Dr. Schwab quotes the text of this document on page 39, but significantly omits this passage, which is perhaps the most important part of the letter. It is true, indeed, that the New Netherlanders liked to impose excise taxes, after the fashion of their mother country. But the English colonies were not backward in this respect. Massachusetts imposed a license tax in 1646, and a general excise in 1668; Plymouth colony imposed an "excise" on wines and tobacco in 1646; Rhode Island in 1655; Pennsylvania in 1684, *etc. etc.* Thus the whole contention of Dr. Schwab that the origin of the New York property tax must be sought in England seems very much exaggerated. The general property tax was not an exclusive possession of England by any means. The efforts made to introduce it under the Dutch régime should not be referred to English precedents alone. The reason of the general property tax is to be found in the general economic and social

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conditions; and this in fact is intimated by the author himself in another place.

The monograph is open to another criticism in its treatment of the property tax on corporations. The laws of 1823 and 1829 are given correctly, but no mention is made of the successive changes, some of them of considerable significance. In particular, the important subject of bank taxation is wholly omitted. Again, the provisions of the general corporation tax law on page 90 are by no means exact, and we find, moreover, no mention of the separate taxes on transportation companies. With these exceptions, however, the essay is a good piece of work. And it is to be hoped that we shall soon see similar monographs devoted to the other American commonwealths.

E. R. A. S.

Freiland. Ein Sociales Zukunftsbild. Von THEODOR HERTZKA. Leipzig, Verlag von Duncker & Humblot, 1890. — xxxiv, 677 pp.

It has seemed to me a mistake on the part of the author of this romance that he has put his book into the form of a novel, for he has not the novelist's gift. His purpose, as distinctly announced, was to present his ideas in a realistic, striking way, so that they would reach a wider circle of readers and would have a deeper influence. If he had presented his views on the social question compactly and in scientific form, the greater part of his readers would have been better pleased, and the book would probably have had a wider influence; for this novel has dissertations as long, dry and unpleasantly scientific to the unscientific novel reader, as is a work on political economy; while to the economist the love story — an improbable, not to say silly one — and the multitudinous details regarding the settlement and growth of Freiland are almost equally burdensome.

One cannot avoid the comparison of this work with Bellamy's *Looking Backward.* As a novel it is immeasurably inferior. Bellamy presented pleasing pictures, with details that were pleasing, but in the main he spared his readers statistical details and long dissertations. Besides that, the spirit of charity and brotherly love, so pleasing in an ideal world, so hard sometimes to find in our real one, breathed throughout the book. In *Freiland* the spirit is the passionless, scientific one, which is out of place in a romance, however valuable and necessary it may be elsewhere. A novel should conform to the principles of literary art; but these would exclude the rather precise pages of population statistics. *Freiland's* absurd love story, too, utterly fails to remove the impression that the author has a piece of hard work on hand, — an impression that is not favorable for arousing one's enthusiasm for the good time coming.

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But the author of *Freiland* would not wish to be judged as a novelist. He is primarily an economist, and this work is intended to be an economic work. He thinks that he has discovered the solution of the social problem, and in this book he makes his discovery known. He had thought long over this problem; he had wondered at the absurdities of many of the answers given by great thinkers from Plato's time to our own; when "suddenly, like a dazzling sunbeam into the darkness of his doubt," the consciousness came that his solution was not in conflict with the discoveries and the work of others, but that it was rather the key to them all and was the only true and complete solution. I confess that the manner in which the author first places himself in the same rank with Plato and Bacon — calling the latter by name — and then coolly acknowledges that he is greater than any preceding social philosopher, has a tendency to prejudice the reader against him; but that should not hinder a judgment on the merits of the case.

Perhaps the fewest words in which the solution of the problem can be given are these: the abolition of interest on capital, of private property in land and natural forces, and of the profits of the entrepreneur as such. Or rather, as the author would say: since the use of the land is free and capital is furnished free of interest by the state, and since each person may at his will engage in whatever business suits him and go at will from one to the other, rent, interest and profits of the entrepreneur disappear, without being forbidden by the state; or, as he puts it again, they unite with wages into a single indivisible income of labor. Free association in business is encouraged to the fullest extent, in order that all the benefits of organization on a great scale may be obtained; and to each association capital is furnished by the state for productive purposes, without interest, though the capital must be repaid, and though taxes are paid for state purposes, as well as to get capital for loaning. Of course, no capital is loaned without good security for the repayment of the principal. It is not given to every one who asks for it.

A detailed criticism of the various points made in the book is not necessary, though they admit of much discussion. On economic questions we expect good work from the author. One fundamental error seems to belong to the book, — the one found in nearly or quite all books written with the same object in view. The author seems to assume too great foresight and intelligence on the part of the citizens, and he seems to overlook in great measure the means by which men are really managed by their leaders. In fact, he acknowledges in one place that it is hardly fair to start a society consisting exclusively of educated people; but he thinks that all would soon be educated in a society

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like that of Freiland. Unfortunately a knowledge of reading and writing, or even of many other arts, will not give a man common sense or take from the ambitious the desire to overmatch, even by unfair means, their fellows. There is to be no master of labor, no entrepreneur who can crush with low wages his workmen. Instead there will be a labor organizer and director, chosen by the members of the association for his fitness, subject to removal by them and having his reward fixed by them. It is difficult to believe that men would know their interests well enough to put the best man into the most important place. Nor can competition of the ablest bring about this result. In real society there is always a dearth of men of prime executive ability, but never a lack of those who are willing to use every art, fair and otherwise, to force themselves into positions of honor, profit and responsibility. Many co-operative establishments are even now, under the present system of society, meeting with success; the failure of others is due as much to the character of the men undertaking them as to the unfavorable form of our present society. The solution of our present social troubles involves a change in the characters of the wealth producers, and I do not see that this is provided for in *Freiland*, though the author thinks that he has appealed to the every-day motives that influence human conduct, and on which are built our present form of economic society.

The author's discussions are many of them very suggestive. For instance, the one regarding the advantages of publicity in all business calls attention to what seems to be a tendency of the day, as the sphere of the state's control is widening. It is probable that more publicity regarding business might be a sufficient check to some of the greater combinations in business, trusts *etc.*, if such publicity could fairly be secured. Certainly much has been done in controlling railways simply by this means.

As a whole, however, when one considers the author's purpose and the range of influence that he ascribes to his ideas, the book must be judged deficient. As a novel it is not a success, and, in my judgment, his reforming schemes are founded on untenable assumptions regarding human nature.

JEREMIAH W. JENKS.

Der Moderne Socialismus in den Vereinigten Staaten von America. Von A. SARTORIUS FREIHERRN VON WALTERSHAUSEN. Berlin, Hermann Bahr, 1890.

Even the special student of economic and social questions in the United States will be grateful to Sartorius von Waltershausen for his conscientious and painstaking study. The book has excellences that no other single volume supplies. A large correspondence with the Ger-

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mans in America who have been at the front in the socialistic agitation — men like Mr. Sorge of Hoboken — furnishes material of first-rate importance. No one has so exhaustively exploited the socialistic press as the author. No one has shown with such thoroughness the political affiliations of the movement, or brought out in sharper outline both the strength and the weakness of the distinctively foreign element. In point of accuracy the book fulfils what we have long been taught to expect from all serious German studies. We are a little startled to hear Wendell Phillips called a famous *politician*, but upon the whole the reader wonders how the author could attain such skill of touch and handling where a foreigner so easily goes astray.

The first excellence of the book is the severely objective spirit in which it is written. It is happily free from both praise and censure of an emotional type. The author is wholly true to Spinoza's superb text: "In order to investigate political matters with the same intellectual freedom as the problems of mathematics, I have taken pains neither to ridicule human actions, nor to bewail nor abhor them, but to *understand* them." This is the spirit of science. Only such a spirit can keep us in close relation to *all* the facts.

The first three chapters are historical, bringing us to the formation of the Socialistic Labor Party in 1874. Though there is little new here, no one has shown so clearly the conflict between the ideas brought by German refugees and "advanced ideas" that were of American growth. The Germans were pleased to call themselves "idealists," and were naturally bitter against the practical realism of the Yankee. The Germans fret at these obstacles precisely as continental socialists always have done in their relations with the stolid matter-of-fact English unionist. Groups and "parties" are formed in this history again and again upon "general principles" or under the touch of a new enthusiasm, only to be scattered by the first sharp contact with any experience which brought to the surface the real motives and aims of the members. There are few in any agitation who see to the end what they want. Some of the German leaders like Dr. Douai and Sorge, who really knew their Marx, realized that the end meant the destruction of private interest and rent and the establishment of the International. Either of these ideas, if pressed strongly enough to the front, frightened both the timid and the prudent. The "national" idea is always in conflict with the international and dissolves many a coalition. Politics too raises havoc in proportion to the size and strength of the association. If Schaeffle could have studied his problem of the socialistic ideal in contact with an extreme democratic society, he would have stated his conclusions in the *Aussichtslosigkeit der Social-Demokratie* even more strongly than he has. Whatever a very distant future may have in store for socialism of the

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German type, it is impossible to see anything but a very dismal failure of its ideal in this American history. There is almost no relation between things popularly called "socialistic" (like state management of telegraphs and railroads) and the final purpose of German socialism. The clear advantage of the present "nationalist" agitation will be to show finally to the public what the real end of socialism is. When the American workman understands that he is to have neither rents nor interest on his savings, he will see that the problem is quite different from exciting debates about municipal control of gas and street railways. No book has better brought out these issues through the simple telling of the history than the work under review.

There is in the second chapter some excellent criticism upon the philosophical basis of socialism. No one has yet adequately shown the hopeless weakness of Marx's philosophy, *as* philosophy. He accepted as a sort of finality the crude materialism that was in vogue before 1854, after which date almost every first-rate scientific mind in Germany came to see and to acknowledge that this type of materialism failed wholly to meet the facts. Marx never got beyond his earlier training, but continued to the end to express his thought in forms of this naïve materialism. No one would claim now that even strictly economic concepts could be cribbed in such formulas. This seems the more strange in Marx because of his insistence upon the relativity of our knowledge. It would seem natural that he should allow in his own system for an elasticity and flux which the principle of relativity implied. In all his thinking, however, Marx was an absolutist and "wrote his qualities upon every page."

It is difficult to avoid a critical word about the title of the volume under review. Though the author with some caution qualifies his use of terms, it is the general question of labor agitation in the United States with which he deals, far more than with socialism proper. There is an entire chapter upon the strikes of the summer of 1877; a chapter on anarchy, with a detailed account of the Chicago tragedy; and an account of the George movement and of the eight-hour agitation, as well as of trades unions, Knights of Labor and trusts. It is true that these things are considered in their relation to socialism proper, and yet often so independently and to such length that we quite forget the subject of the book.

JOHN GRAHAM BROOKS.

The Economic Basis of Protection. By SIMON N. PATTEN, Ph.D. Philadelphia, J. B. Lippincott Co., 1890. — 144 pp.

Professor Patten has endeavored in this book to present a new treatment of an old subject. That protectionists need a new statement of their doctrines to meet the difficulties of the situation into which

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political controversy has forced them, cannot be doubted. Friedrich List's great work, *National Economy*, is no longer in harmony with the trend of protective legislation; and although practical men profess to disregard theories, practical legislation in any line cannot long sustain itself unless it rest on some comprehensive theory of society or of government. To supply this need, and to provide a basis in theory for the latest phase of the protective policy, was, as I understand it, the purpose of Professor Patten in writing *The Economic Basis of Protection.*

But in what particulars, it may be asked, does the latest phase of protectionist thought differ from that of the classic writers? It will be adequate to mention two characteristic points of difference. With the old writers, freedom in exchanges was the ultimate end to be attained by every nation. Protection with them was but a phase or stage of industrial development, its immediate purpose being the industrial education of the people. The new leaders, on the contrary, urge protection as a permanent policy, and argue that it should not be abandoned even though the industrial skill of a nation comes to be greater than that of other nations. Indeed Professor Patten carries this so far as to claim that the loss entailed by trade between peoples of unequal industrial development is greatest for that people whose labor is the most efficient. Again, in the old scheme of protection it was thought to be illogical to obstruct free importation of raw material. "We have," says Friedrich List, "previously explained that free trade in agricultural products and raw material is useful to all nations at all stages of their industrial development." The arguments leading to this sentence strike the keynote of the old system of protection, but they are entirely ignored by the modern writers and wholly disregarded by current legislation. It may be doubted if Henry Clay would have accepted a nomination for the Presidency on a platform that endorsed such a tariff bill as the McKinley Bill.

If the above be a correct presentation of the situation, we are naturally led to inquire in reviewing Professor Patten's book, what new theory of social development is set forth to serve as the basis for this newest phase of the protective policy. No such theory is definitely stated (an omission which I regard as a serious error), but it is not difficult to discover certain phrases which our author believes to carry with them an adequate social theory. Society, he claims, should be kept in a condition of dynamic progress. This is the hook on which his entire argument hangs. He continuously brings into contrast the *dynamic* and the *static* theory of society, claiming that protection is in harmony with the former and free trade with the latter theory. "Our ideal," he says, "must stand in sharp contrast with the statical ideal advocated by most free traders."

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These words, "dynamic" and "static," were of course borrowed from current discussions on sociology, and in making use of them Professor Patten shows that he regards society as an organism whose development must proceed according to certain laws; and further, in professing himself an advocate of "dynamic progress," he asserts, by inference, that society, being an organism of the highest type, is capable of directing the course of its own development. From this it follows that social progress may be dynamic, that is to say, it may be directed by a conscious purpose which finds expression in law. In this manner there is discovered a logical basis for the claim of protectionists, since it is at least logical to assert that protective laws may be made an instrument whereby a government can direct industrial development into certain chosen channels.

It will be observed that this theory of society is very different from that which lies at the basis of English economy; and, in assuming it, Professor Patten successfully evades the ordinary criticisms of those writers who adhere to Manchester doctrines. This must be appreciated before his book can be understood. For myself, I am quite willing to admit that the standpoint of his treatise is in harmony with the permanent trend of economic thought. I cannot, however, regard it as a satisfactory treatise; for it does not seem to me to follow out in a clear and simple manner the line of reasoning imposed by the premises assumed. It is an open question whether or not the acceptance of the dynamic theory of society necessitates the acceptance of the policy of industrial protection. This is, however, asserted by our author without argument; and he most unfairly places the alternative before his readers of believing in protection or of confessing themselves adherents of social stagnation. By implication he denies that one who professes to believe in the theory of dynamic progress can advocate freedom in matters of trade. His treatise, instead of adding to our knowledge of the science of sociology by a discriminating application of its principles to the doctrine of protection, seeks merely to dignify the doctrine of protection by expressing its stock arguments in phrases borrowed from sociology. It does not seem to me that Professor Patten appreciates the broad and deep significance of the phrases he has borrowed.

If this book be regarded from the standpoint of the minor arguments it contains, there is much to be commended. Whatever Professor Patten writes is suggestive. His presentation of the changes that have taken place in economic doctrine during the last one hundred years, and the relation of those changes to the theory of protection, is most instructive. His argument to show that protection is opposed to monopolies is ingenious in the extreme. The exception which he files to the theory of comparative cost in its application to international trade

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has considerable force. And his appreciation of the fact that the first step in social progress is the development of human wants, is admirable. But the minor arguments contained in a book cannot rescue it from criticism. A book that is well written must be properly adjusted to the scheme of thought to which it professedly allies itself, and the premises it assumes must be logically carried out. When the great book on the protective policy shall have been written, it will be found to fit into a general theory of dynamic sociology. Professor Patten's book does not so fit. The place left vacant, now that modern protectionists have repudiated Friedrich List, is still vacant.

HENRY C. ADAMS.

Die Steuern der Schweiz in ihrer Entwickelung seit Beginn des 19. Jahrhunderts. Von GEORG SCHANZ. Stuttgart, J. G. Cotta Nachfolger, 1890. — 5 vols., large 8vo, 384, 487, 383, 289, 489 pp.

Among all the European countries Switzerland is the only one where the general property tax is still to be found. It is the one state above all others whose methods of taxation bear a close resemblance to those of the United States. It would be only fair to expect, therefore, that a work of such prodigious proportions as that of Professor Schanz on Swiss taxes should be of the utmost importance to all Americans. And the expectation is not disappointed. But rarely before in the history of economic literature, has a work been published which is at all comparable to this in its value to the American student of finance.

Professor Schanz earned his reputation by the thorough work displayed in *Englische Handelspolitik gegen Ende des Mittelalters,* published about ten years ago, as well as by several minor works on the history of labor. In 1884 he started the *Finanzarchiv,* which is still the only serious review devoted exclusively to the science of finance. In this periodical Dr. Schanz has been publishing for the past few years detailed histories and descriptions of the tax systems of different German commonwealths, which have challenged admiration for their thoroughness and accuracy. And now he offers to the scientific world a work which stands unequalled in magnitude of scope and detail of treatment.

A word first as to the methods of the author. The opening volume is devoted to a sketch of the general development. A preliminary chapter treats of the federal taxes and the general situation; a second chapter, of the general direct taxes in the cantons; a third chapter, of the licenses, succession duties, military tax, *etc.;* a fourth chapter, of the indirect taxes on consumption; while a final part is devoted to the questions of local taxation. The three following volumes take up each of twenty-five separate cantons or commonwealths in detail; describe the history, not only of all the changes, but of all the attempted reforms;

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and close with a minute statement of the existing condition in each. The fifth and final volume contains the text of all the important tax laws and administrative ordinances for each commonwealth since the beginning of the century. It will be seen at a glance how stupendous must have been the labor necessary to complete such a task.

Let us now endeavor to ascertain in what respects the work is especially important to Americans. Professor Schanz begins by accepting the theory advanced by the present writer regarding the historical development of taxation and the position of the general property tax in this development (volume i, pages 52 *et seq.*). He shows that Switzerland like the United States has retained the mediæval property tax up to this day; but he further shows — and this is the important point — that Switzerland, *unlike* the United States, has successfully endeavored to reconstruct its property tax and to supplement it by another system which has brought it more into harmony with the needs of the present century. The conception of general property as the basis of taxation has been permeated, gradually but with ever-increasing rapidity during the past thirty years, with the ideas of product and income. The attempt to realize the principle of ability to pay has resulted in a dissatisfaction with the old property tax and a remodelling of the whole system. The methods in the various cantons may be summed up as follows: (1) a property tax plus a general income tax; (2) a property tax plus a partial income tax; (3) a property tax plus a supplementary income tax, in the sense that only the surplus income above a certain percentage supposed to represent the interest of the taxable property is assessed; (4) a real property tax plus a general income tax. Only three of the smaller cantons still hold to the general property and poll tax; while only one canton clings to the once universal, but still more primitive system of the single land tax.

This is the one great lesson to be drawn from Swiss experience. It ought to be sufficient to silence all those enthusiasts who cry out for a retention of our present American system and point with triumph to the only democratic republic in Europe as practising the same methods. On the contrary, the one great effort of the Swiss legislatures during the past half-century has been to supersede the general property tax, not necessarily by the income tax, but by some form of income taxation; by some system which, directly or indirectly, makes not the property, but the product of the property, not objects, but individuals, the basis of taxation. As Professor Schanz sums it up: "Ueberall drängt sich eben mit elementarer Gewalt der Gedanke durch, dass es doch nicht das Vermögen, sondern das Einkommen ist, welches man eigentlich treffen will."

But let us leave this main fact, which might amply serve as a text for

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a whole volume on American taxation, and turn to some of the other points of chief interest to Americans. The question of taxation of corporations is not discussed as a whole by Professor Schanz, but the facts are presented. The most important have been used by me in an article in the present number of the POLITICAL SCIENCE QUARTERLY, and the topic may therefore be passed over in this place. Other points upon which the Swiss experience is extremely instructive are: the different rates of taxation for the different kinds of property; the various methods of assessment, according to market value, insurance value or par value; the exemption of church or other property; the distinction between funded and unfunded income; and the great subject of double taxation in all its various forms. But the four chief points to which I desire to call attention are these: the methods of controlling assessments, the question of progressive taxation, the succession taxes and the system of local taxation.

Switzerland, like the United States, has tried all forms of assessment for the general property tax — self-assessment and official assessment, oaths and no oaths, publicity and secrecy; and all have proved equally inefficient. One institution, however, has been developed in the last few decades that is peculiar to Switzerland. It is that of the inventory (*Inventarisation*). As soon as a tax-payer dies, his entire property is seized by the government and held until an exact inventory is made out. If the inventory discloses fraud in the previous self-assessments, punitive taxes must be paid ranging in some cantons over a period of ten years. This method of control is of course based on the right idea. But it has its objectionable sides. It must be distressing, to say the least, to the family of the deceased when the tax officials clap their seals on the property, as it were in the very chamber of death. It has also it weak sides. Those who have a short time to prepare for death commonly give away a large part of their property. Again, the inventory naturally becomes a less trustworthy guide the farther back we go, so that at its best it can serve as an index for a very few years only. But notwithstanding all these defects, the inventory has done good service in increasing the tax receipts, and it forms to-day the chief subject of dispute in the Swiss cantons. Perhaps the principle of back taxes is partly applicable in the United States.

Another point which has attracted the attention of foreign countries is that of progressive taxation. Without going into the arguments *pro* and *contra*, it may be said that Switzerland has now definitively accepted the principle of graduated taxation, and that the cantons apply it not only to income but also to property taxes. Since 1870 especially, a large majority of the commonwealths have inserted the principle of progressive taxation into their constitutions, while only a few constitutions

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fix the limit of the progression. And the system, far from causing any wholesale exodus or any such startling confiscation as we read of from time to time in the American newspapers, has proved so satisfactory that wherever tried, it has never been abandoned. There also Switzerland is not at one with the United States.

Thirdly, about two-thirds of the Swiss commonwealths have supplemented their system of direct taxation by taxes on inheritance and bequests. This movement is an old one and antedates (except in Bern and Zürich) the movement to supplement the property tax by an income tax. We in the United States are still in the first phases of the reform; for we are now agitating only for an extension of the collateral-inheritance tax system. Switzerland has passed beyond this phase. Its system applies not only to collateral inheritances, but to all inheritances and bequests. The rate ranges from three per cent in case of husband or wife in Waadt, to as much as twenty per cent for non-relatives in Aargau.

Finally, the methods of local taxation are very instructive. Only a few cantons pursue the same system for both local and commonwealth purposes. In most cases the income tax is a commonwealth tax, while the local tax is a property tax, and often a real-property tax. In addition to the local property tax, however, we find very generally a local "household" tax, which is practically a system of poll taxation designed to reach some of those who escape the real-property tax. The whole local tax system is marked by two significant facts. In the first place, the idea of progression, which is almost universally applied to the commonwealth taxes, is absent in the local taxes. The local property taxes are almost uniformly proportional and not progressive. Secondly, the exemption of debts — mortgage debts as well as others — is permitted in state taxes, but is found only to a very limited degree in local taxes. To state the reasons of this distinction and the important inferences to be drawn therefrom would lead me entirely too far in this brief review.

Enough has been said to show the importance of Professor Schanz's work. It does not pretend to discuss questions of theory, and yet almost every page contains matter of more significance to the average American than whole chapters of some of the common text-books on finance. In some few questions of finance Switzerland has a little to learn from us; in most matters we have an important lesson to learn from Switzerland. What that lesson is has been only faintly outlined in the above remarks. It is to be hoped that its full significance will ere long be appreciated by every American student and by every American legislator.

EDWIN R. A. SELIGMAN.

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Analisi della Proprietá Capitalista. By ACHILLE LORIA. Torino, Fratelli Bocca, 1889. — 2 vols. gr. octavo, 777, 474 pp.

"*Ingens iterabimus aequor,*" as the author says at the end of his first volume, looking forward to the second. Italy has long been giving us much of our best economic literature, and this is her masterpiece. Already well known by his work on the *Law of Population in the Social System* (1882) and his monograph on the *Influence of Ground Rent in the Topographical Distribution of Industry* (*Rendiconti dell' Acc. dei Lincei*, 1888), Loria now presents his *magnum opus* in a radical examination of the phenomenon of profits, viewed in the Smithian sense of gross return for the use of capital. Loria is a professor in the University of Siena. His essay has been crowned with a royal prize offered for the best discussion of an economic topic. Its first volume sets forth the theory abstractly, the second seeks to justify it *a posteriori* by a careful industrial history of Europe and the colonies. This at least is well done, and the reader, even should he feel obliged to eliminate the author's theorizing, will find the volume a most valuable addition to economic history. The chief topics in this historical survey are *profits* as based (1) on slavery, (2) on serfdom and (3) on wages. The book reminds one in many ways of Marx's *Kapital.* Starting, like that, from Ricardo and essaying to complete him, it breaks as radically with economic orthodoxy, betrays the same keen analysis, a more consistent logic and an even more astonishing mastery of economic literature, whether standard or recondite, old or recent. In the last respect the author is second to Roscher alone. While he is familiar with the libraries of Rome and Berlin, long study in the British Museum has rendered him specially fond of the English economists. He refers to them oftener than to the German, far oftener than to the French. He is at home in the latest American and Austrian economic treatises, and more than once quotes from the Russian. He is well read in philosophy too, even in authors so wide apart as Hegel and Herbert Spencer. Nor do his learned references seem artificially paraded. The broad scope of the *Analysis* affords space and occasion for review of every cardinal topic in political economy, — population, value, money, interest, taxation, — and upon none of them does Loria fail to show himself a master. Specially noteworthy is his conception of "natural" or "pure" wages, and his proof that it need not be starvation wages.

The theoretical part of the work canvasses the same problem which engaged Marx, though solving it rather by the method of Henry George. Loria's main thesis is that profits arise solely from the suppression of free land. So long — this is the thought of chapter i, volume i — as free lands exist, accessible to the laborer, either "dissociate economy" or

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"mixed association" prevails, — mere laborers working for capitalists only while they can thus earn more than by pure labor on land. So long, in Loria's technical phrase, they have "option," and neither wages nor profits exists as a category by itself. Both arise, however, as soon as land ceases to be free, wages henceforth falling below the "natural" rate prevalent till now, while profits exceed the old normal, involving the illicit element so familiar to Marx's readers as "surplus value." Social profits break up into individual profits through the operation of value, whose analysis forms the subject of the second chapter. There is thus competition among capitalists to increase their profits, tending for a time to keep wages above the minimum of the laborer's existence and to restore to him the "option." This constrains capitalists, in order that profits may continue, to force wages down to the existence minimum, precisely according to Ricardo's iron law. For this they employ various means, — artificial elevation of land values, total reduction of wages, depreciation of the circulating medium, employment of women and children, lengthening of the labor day and conversion of wage capital into fixed. All this is studied in the third chapter, where Loria thinks he lays bare the very "interior life" of profits. Capital now has free field for development within itself, the result of this process, detailed in chapter iv, being its subdivision into interest, reward to oversight and rent. In the fifth chapter he argues that profits can continue at an elevated rate only by the systematic creation of an excessive population. The gradual decrease of profits, involving the reduction of wages to a minimum, makes possible the continuance of profits, while the systematic excess of population now gives way to an automatic excess.

But the very moment when profits, thus become automatic, seem to defy every attack, begins the inevitable negation of profits. The increasing limitation of production brought about by private ownership of the soil reduces profits below the minimum, so that the continuance of production becomes irreconcilable with capitalistic economics, and it is necessary to substitute for that form of industry which is based upon the suppression of free land, the superior social form built upon free land; that is, to restore mixed association, re-establishing the marriage bond between man and the land [vol. i, p. 776].

And again in another place he says:

At this point the wages class intervenes in economic evolution for the first time with its own energy, provoking therein a radical change, *viz.*, the passage from the unconscious to the conscious. And since the reaction of the wages class is merely the result of the progressive fall in the rate of profits, which in turn results from the economic development, it is evident that there is innate in the very nature of this process that final metamorphosis which converts it from automatism into a free and human movement. From this spontaneous movement of the laboring class, which characterizes the extreme bound of capitalistic development, triumph is inevitable. Numbers, which form the

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weakness of the laboring class in the economic strife, form its strength in the social, rendering its demand irresistible; and this finds its crown in the re-establishment of free land and the institution of that social form which is its necessary product [*ib.*, p. 775 *sq.*].

The author nowhere pictures this process in detail, giving us no hint whether every man is to become an agriculturalist, as Tolstoi thinks well, or whether the masses are to regain their interest in the soil through some machinery of taxation, as Henry George advocates. We hope that Loria has in store a constructive treatment of this tremendous problem.

It is hazardous, after but a single reading, to express a final opinion upon any complicated course of thought like that before us. It were easy to question and even to refute much which is here advanced. In many of its links the chain of reasoning seems weak. But we are impressed that Loria has substantially made out his main thesis, and that the practically absolute ownership of land in modern times has wrought social miseries which most economists disincline to recognize. Be this as it may, whoso, hereafter, will deeply and broadly discuss the social question in any of its main phases must reckon with Loria's *Analysis*.

E. Benj. Andrews.

Le Socialisme d'État et la Reforme Sociale. Par Claudio Jannet, Professeur d'Économie Politique à l'Institut Catholique de Paris. Paris, Librarie Plon, 1890. — 8vo, xiv, 606 pp.

Ferdinand Lassalle: Sein Leben und Wirken. Von Dr. Adolph Kohut. Leipzig, Verlag von Otto Wigand, 1889. — 12mo, ix, 210 pp.

Socialism and social reform continue to be excitative of a great deal of literature. These subjects have aroused the public imagination, and every one who describes what that vague terror, socialism, really is, or who suggests a plan of reform, is eagerly listened to. Two books touching these points lie before us. M. Jannet writes an important work defining the position of the French Catholic church on the social question; while Dr. Kohut adds one more contribution to the Lassalle cult.

It is surely a matter of very great importance, what position the Christian church, and especially the Catholic church, on the continent of Europe takes on the social question. Its utterances must be listened to with great respect; and it is not too much to say that every right-minded man will listen with the hope that out of the church's wisdom may come some absolving word showing us the true way out of our difficulties. The layman, reading the work of the Catholic theologian

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with such a hope, will probably experience a feeling of despondency. The book is a curious mixture of Catholic theology, *laissez-faire* economics and French legitimist politics. Even passing over what the irreligious reader might term cant, the economic and political notions appear to me to be very unsatisfactory. The gist of the book will be found in the first essay, "On the Relation of the State to Labor" (*L'État et le régime du travail*), and the theoretical position of the author may be defined as follows. We must distinguish, in the first place, between *l'ordre politique* and *l'ordre économique*. The first pertains to the state, the second to the family. In economic affairs, therefore, the state is not to interfere. It is true that in the present economic order mankind suffers from many evils. But such evils are due to original sin by which man fell from grace. Neither are we to expect ever to realize the perfect economic harmony (contrary to Bastiat), for that would contradict the curse laid upon man. Some progress has been made, but progress is always through suffering. The state having to do only with *l'ordre politique*, the individual must be left free to pursue his own economic interests. Each one must have liberty to choose his own occupation, to exercise it where he pleases and to dispose of the proceeds. Property is a *natural* right and cannot be interfered with by the state. The state has no right to compel men to enter associations, but on the other hand should allow freedom of association with certain limitations. The state interferes with the economic order only to prevent violations of the moral law. Factory laws, restrictions on the employment of women and children, the prohibition of work on Sundays, — are all justified on this ground. The antagonism existing at present between employers and laborers is due not to economic difficulties, but to human nature corrupted by envy. Remedies for present evils are first of all the revival of true religion; subordinate to this are the "*patronage des chefs d'industrie*," Christian benefit societies, co-operation, charity and a good administration of the state in finance and politics.

The criticism on all this is that it is not precise enough to carry us far in the solution of economic problems. Undoubtedly if the grace of God filled the hearts of all men and led them to observe the ten commandments and exercise love and charity, much evil would disappear from society. But what we want is guidance in practical economic affairs. M. Jannet affirms that the natural economic order demands freedom of labor and non-interference of the state. The state is to interfere only when the moral law is violated. But it is evident that it must be merely a subjective judgment of the author as to when the moral law is violated sufficiently to justify the interference of the state. Practical examples show how uncertain this judgment is. It is moral

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to prohibit labor on Sundays and feast days; it is immoral to fix an eight-hour labor day. National factory laws are moral; but international factory laws would be immoral, because the division of humanity into nations is divinely ordained. Laborers should be allowed to form associations, so long as they do not pursue ends contrary to religion and morality, such as systematic suspension of labor! On the other hand the right of property is absolute, *potestas procurandi ac dispensandi*, and the equitable dispensation must be left to the caprice of the individual.

The first essay is followed by special studies of efforts at social reform, such as the peasant unions of Germany, reform of the law of inheritance, compulsory insurance of workingmen, co-operative societies, Catholic associations *etc.* Many interesting facts are given, especially in regard to the Catholic associations in Germany and France. But the standpoint is always that assumed in the first essay. Every interference of the state is viewed with horror and the workman is commended to the pity and charity of his employer. The author even goes so far as to denounce the "Christian socialism" of the German Catholics whenever it inclines toward state-help. He declares roundly that there can be no such thing as Catholic socialists.

The importance of Lassalle as a scientific expositor of socialism is diminishing before the profounder philosophy of Rodbertus, which is exercising such an influence on German economic thought. But Lassalle remains the one romantic figure in the decidedly commonplace and not very attractive crowd of modern socialistic agitators, and his writings form a delightful contrast in clearness and interest to the obscurity and tediousness of Marx and Rodbertus. Dr. Kohut sketches in a popular way the episodes of that curious life: Lassalle's youth, the chivalric devotion to the Countess von Hatzfeldt, the brilliant literary career, the brief connection with Bismarck, the arduous organization of the Social Democracy and the tragic but undignified end in which vanity, more than passion for Helene von Dönniges, involved him. Through mere narration, such a life cannot win either respect or admiration. It is explicable only by taking Lassalle's own maxim that great things are accomplished only under the influence of strong passions. Detailed biographical inquiry, however, is apt to reveal too clearly the ignoble side of these same passions. We do not believe that anything is to be gained either for science or for literature by further investigation of the foolish adventures into which Lassalle's vanity and self-consciousness led him. In fact we know too much already.

On the other hand, Lassalle's biographer can always find an important task in depicting him as a personal and intellectual force in the social movement of the nineteenth century. As an orator and a writer he impressed on the lower classes a clear and vivid theory of their position

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in society and their rights; and although his particular economic proposals have not prevailed, the impress of their theory still remains. It is in this sense that his life, and more especially his words, are worthy (perhaps not indeed in equal degree) of such scientific biographical study as John Morley has given to Voltaire and Rousseau, those intellectual forces of the eighteenth century. To this of course Dr. Kohut's book can lay no claim.

R. M. S.

Economic and Social History of New England, 1620–1789. By WILLIAM B. WEEDEN. Boston and New York, Houghton, Mifflin & Co. — 2 vols., 964 pp.

The author of this work has endeavored to meet a long-standing want. The economic history of this country is still to a large extent an unexplored field. An effort to trace the development in that line of a section so important as New England is sure to be welcomed by all scholars. Something better is wanted than the occasional chapters of Palfrey, the work of Lodge or even the very excellent account of New England in 1650 which is given by Doyle. More thorough investigation and detailed statement are needed. This can well be done by sections — the northern, the middle and the southern — because social conditions peculiar to itself have to a certain extent affected each region. But a history of social manners and customs is not what is wanted. An ample literature already exists upon that subject. Every historian has devoted attention to it. Books have been written specially upon it. Magazine articles almost beyond number exist, which tell us how our ancestors dressed, ate, entertained their friends, made love and spent, in short, all the days of the week. Therefore it seems to the writer that Mr. Weeden might profitably have omitted a mass of material which he has introduced concerning these matters.

The work shows extensive reading, not only in colonial records and historical collections, but in local histories and authorities still in manuscript. Sources of information have been used which earlier writers have neglected, or have not been able to reach. The result has been the accumulation of a vast number of facts about early New England agriculture, fisheries, manufactures, trade and means of communication. The methods of exchange employed by the early settlers are also described, though relatively less space is devoted to the later experiments of the colonies in the use of paper money. A table of prices is appended to the work, covering the entire period of which it treats, but it is not complete enough to be of scientific value. The course of trade with the French and Dutch colonies of the West Indies and with the states of continental Europe is described at length. One

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can see from this book to how large an extent the foreign trade of New England was carried on in defiance of the Navigation Acts. The insufficiency of administration under them is emphasized, but almost no account is given of the efforts made and the methods actually adopted by the home government to secure their enforcement. The sections on piracy show how imperfect was the system of ocean police which then existed for the protection of those engaged in international trade. The evidence of a relatively low standard of commercial morality among New Englanders in the 17th and 18th centuries is abundant.

But there are certain faults in this work which prevent it from being anything better than a storehouse of facts, of which the future historian may make use. Its arrangement is poor. The subdivision into periods is not particularly clear or suggestive. Amid a succession of chapters, cut up into brief paragraphs, each bristling with local and personal details, the reader becomes confused and is unable to follow the development of the subject. This is especially true of the earlier chapters of the first volume. One would almost infer that some of the pages had been printed from the jottings of a note book without change. Detached and unconnected sections concerning the iron industry, for example, are to be found on pages 174, 177, 181, 183, 186, 189. Interspersed among these are paragraphs on a variety of other subjects. Further, upon pages 200 and 201 we find paragraphs, side by side, concerning the building of woollen mills, the building of sawmills, the mining of block lead, the state of morals in Connecticut, the arrival of certain Jews at Newport, R.I., the rate of interest in England, the supply of lumber, the business of the Massachusetts mint, the building of iron works, the use of cider and malt, and sales of wheat by John Hull. Other similar examples might be cited. So imperfectly have the materials of the work been digested, that much of it has been left in the form of unnecessarily complicated annals.

It is not easy for an American to treat with fairness the policy of the Navigation Acts. In order to do that, it is believed that one must put himself to a certain extent in the place of the British government. He must keep before him the idea that England was contending against Spain, France and Holland, at first for the preservation of her colonies and then for commercial supremacy. He must divest himself wholly of the dogmas of natural right and *laissez faire* upheld by the Manchester school, and to a certain extent of the theories of Adam Smith himself. He must study the writers on trade and economics whose works were published or read two centuries ago. Finally he must examine the testimony given by merchants and others before the English Board of Trade, the reports of agents sent to the colonies and to foreign countries

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and the representations made thereon to the Privy Council. Upon these was based the trade legislation of the 18th century. It will then appear that the policy adopted was not wholly irrational or ill-considered. It was an honest, though, as it proved, a mistaken endeavor to meet real needs. It was not intended to oppress the colonies. Those which did not revolt probably felt its restrictions more than those which did. The fault of the author, as of all American writers who have hitherto treated of the subject, is that they have looked at it almost wholly from the colonial standpoint. Into their treatment of the subject they have also introduced a good deal of cheap rhetoric about American liberty and enterprise which, to say the least, is out of place in scientific discussion.

H. L. OSGOOD.

La Vie Politique à l'Étranger: 1889. Publiée sous la direction et avec une *Préface* de ERNEST LAVISSE. Paris, G. Charpentier et Cie, 1890. — ix, 486 pp.

As M. Lavisse says in his preface, this new annual shows that "la curiosité du dehors s'est réveillée en France." This will be no news to those who have followed the admirable work of the French Society of Comparative Legislation, or even looked into the *Annales* of the French School of Political Sciences; but the *Vie Politique* is at least a new evidence of the intelligent curiosity to which M. Lavisse alludes. It is a record of the leading political events of the year in all parts of the world except France. Every state except France — even such minute independencies as San Marino and Altenberg (Moresnet) — has its place in the scheme. The work has been divided among a number of writers, but the volume shows unity of plan and a substantial evenness of execution. The record of events in the more important countries is fairly full; not only the strictly political events but also the economic and social movements are followed; the reader will find, for example, accounts of the labor troubles of 1889 and of the relations of church and state throughout Europe. In some cases the treatment of single topics outruns the limits of a chronological record. The account of the German colonial policy goes back to 1884; and the title on the United States, by M. Joseph Chailley, includes suggestive paragraphs on the character of the American people, the spoils system, the protection policy and the restriction of immigration.

It will be seen that this new annual is unlike any of those now in existence. It covers, to a certain extent, the same ground as the *Europäischer Geschichtskalender* of Schultess (started in 1860); but there are important differences in plan and scope. The *Geschichtskalender* gives under the single headings a purely chronological record of events in

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each country, followed at the end of the volume by a brief narrative history of European politics. The *Vie Politique* gives a narrative history of each country, but none of Europe at large, so that the movement of diplomacy must be sought under the titles devoted to the single states. The *Geschichtskalender* gives more original documentary material and is in so far of greater value to the student. The *Vie Politique* is much more readable and will appeal to a wider circle. The *Geschichtskalender* is weak in its extra-European portions; and it is here that the *Vie Politique* is particularly strong, devoting, for example, no less than 116 pages to Africa. The German annual is especially full as regards the movement of German politics; the French annual, as its title implies, excludes France. (France already possesses an excellent record of internal politics in M. Daniel's *L'Année Politique*, issued by the same publishers.) Finally, the *Vie Politique* attempts to follow the movement of political literature. The bibliography is not very full in the present number, but M. Lavisse promises that it shall be "developed."

There are occasional mistakes in the spelling of German and English words, especially of proper names, but not so many as one expects in a French book. There are not many errors of fact, even in unimportant details — but Secretary Tracy will be surprised to learn that he was at one time "maire de Brooklynn" (page 368), and the discovery of "trois *présidents* à la fois" in West Virginia will startle all Americans.

M. S.

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RECORD OF POLITICAL EVENTS.

[From May 1 to November 1, 1890.]

I. THE UNITED STATES.

1. National Affairs.

THE ADMINISTRATION. — In foreign relations the negotiations in reference to the **Behring Sea seal fisheries** have been most prominent. Secretary Blaine and Sir Julian Pauncefote have been in constant communication, but up to July 19, the date at which the published correspondence terminates, there was no near prospect of settlement. Without insisting upon the claim that Behring Sea entire was within the jurisdiction of the United States, Mr. Blaine at first held that the indiscriminate slaughter of seals on their way to the breeding grounds, threatening, as it did, the extinction of the species, was *contra bonos mores*, and hence justified measures of repression. The British government regarded the destruction wrought by the Canadian sealers as overrated, but proposed through Sir Julian Pauncefote a joint convention between the United States, Great Britain and Russia, providing for a mixed commission of experts to clear up the disputed questions of fact in the case, and establishing meanwhile a close season for seals during the months of migration, with a further prohibition of all hunting within ten miles of the shore of the breeding islands. This proposition was rejected by the United States on the ground that a ten-mile limit was wholly inadequate to its purpose, and that, moreover, Great Britain had in 1888 itself offered to keep its vessels 600 miles from the islands. An offer was made in turn to arbitrate, if, pending the settlement, the British government would either by command or even by request prevent its subjects from hunting the seals for the approaching season. Lord Salisbury announced the impossibility of accepting this offer, except under conditions which Mr. Blaine would not admit. This was in June. In the meantime, orders were issued for the despatch of United States revenue cutters to Behring Sea, in accordance with law, to prevent poaching. Thereupon, on June 14, the British minister submitted a formal protest against any enforcement by the United States of "their municipal legislation against British vessels on the high seas beyond the limits of their territorial jurisdiction," and declared that the United States would be held responsible for the consequences of any such acts. According to report, the State department was notified verbally that British naval commanders had been directed to release any Canadian sealers which might be seized by the revenue cutters. No seizures were reported during the summer. The later phases of the negotiations as published reveal a stronger tendency on Mr. Blaine's part to assert the absolute rights of the United States over so much of Behring Sea as had been recognized as subject to Russian control, *viz.*, 100 miles from the coast. The Russian ukase con-

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cerning the matter did not, according to the secretary, "declare the Behring Sea to be a *mare clausum*." — Protracted negotiations have been in progress with the French government in reference to **the exclusion of American hog products** from France on sanitary grounds. Mr. Reid, the American minister at Paris, addressed to M. Ribot, the French minister of Foreign Affairs, an elaborate communication on July 3, insisting upon the healthfulness of American pork, showing the evil effects of its exclusion upon the French people, and intimating that a conciliatory policy in this matter would increase the chances of a removal of the American duty on works of art and lessen the likelihood of a prohibition of French wines. Public sentiment in both France and Germany seems to be turning against the restriction. A Meat Inspection Bill was passed by Congress in August [see below, Congress] which was intended to give a sharp stimulus to this tendency. — The difficulty between the United States and Great Britain on the one hand and Portugal on the other, in the matter of the **Delagoa Bay railroad**, has been submitted to the arbitration of the Swiss government, before whose representatives proceedings in the matter were begun in August. — **A convention with Mexico** was signed in July, defining the times, places and circumstances under which the troops of either country may cross the boundary in pursuit of hostile Indians. — In a series of messages the President has transmitted to Congress, with recommendation of action thereon, the **projects of the International American Conference** in reference to an intercontinental railway, an international American bank, an international monetary union *etc.*

The Treasury. A stringency in the money market, due, it was said, to heavy investments in foreign goods to anticipate the new tariff, caused the secretary of the Treasury, in the middle of August, to offer to redeem at par $20,000,000 of 4½ per cent bonds and to prepay interest to September 1, 1891, when the term of the bonds expired. He also offered, September 13, to purchase $16,000,000 of four per cents of 1907, with the same general object in view. Liberal disbursements under these offers and otherwise seemed to relieve the pressure.

Department of the Interior. Negotiations with various Indian tribes on the borders of Oklahoma have been in progress, in order to extend the boundaries of the territory by purchase. Obstacles have been raised by cattle companies who hold leases of large tracts from the Indians and who have opposed a passive resistance to the orders of the government to vacate the lands. Agreements have been made with the Iowas, Sacs and Foxes, Pottawatomies, Shawnees, Cheyennes and Arrapahoes, which will be submitted to Congress for approval. About 4,500,000 acres of land are involved. Commissioner Morgan declares, in his annual report, that it has become the settled policy of the government thus to destroy the system of reservations and tribal relations, and by severalty allotments to settle the Indians upon their own homesteads. — The Congressional investigation of the **charges against the Civil Service Commission** resulted in a report in June censuring one of the commissioners for laxity of discipline in the administration of his office. — **The Census** was duly taken in June. Many complaints of inaccuracies in enumeration were raised, and a number of cities, including

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New York and Brooklyn, instituted re-counts which showed results widely differing from the official. A formal application by the mayor for an official re-count in New York was denied by the secretary of the Interior, October 27. Eminent statistical authorities, judging from comparison with the average rates of increase heretofore, believe that the totals of population as officially obtained are not trustworthy.

Appointments to office. The following have been made by the President: assistant secretaries of the Treasury, Oliver L. Spalding and A. B. Nettleton; assistant secretary of the Navy, James Russell Soley; first and second assistant Postmaster-generals, Smith A. Whitefield and James Lowrie Bell; minister-resident to Portugal, George S. Batcheller; to Siam, Sempronius H. Boyd. The ministers-resident to Bolivia, Denmark, Switzerland, the Hawaiian Islands and Paraguay and Uruguay have been raised to the rank of envoy-extraordinary and minister-plenipotentiary.

CONGRESS. — The session lasted till October 1, and was notable for the amount of legislation actually completed. 16,972 bills were introduced, of which nearly 1400 became laws, many being of the highest importance. The **new powers given to the Speaker** by the rules were rigorously applied by Mr. Reed and contributed materially to limit filibustering in the House. The decision of seven contested elections in favor of the Republican claimants lessened the difficulty of obtaining a Republican quorum, but in the latter part of the session, when absentees became numerous, the Democrats succeeded more or less in obstruction by withdrawing from the chamber altogether at roll-call. — Besides those described under Tariff, Currency and other heads, the following were among the most **important laws enacted**: the Dependent and Disability Pension Act, granting from $6 to $12 per month to any soldier or sailor of the Rebellion who is suffering from disability that incapacitates him from supporting himself by manual labor, and rendering easier the establishment of claims by dependent parents; the Anti-Lottery Act, closing the mails to all correspondence and to all advertisements relating to lotteries or other similar enterprises; the Meat-Inspection Act, which establishes a rigid sanitary inspection of meat seeking exportation, provides that whenever the President shall be satisfied that unjust discriminations are made by any foreign state against the importation to, or sale in, such state of any product of the United States, he may direct that such products of such foreign state as he may deem proper shall be excluded from importation to the United States, and authorizes the exclusion by the President of any article of food or drink that he may find to be adulterated to an extent sufficient to be injurious to health; and the Land-Forfeiture Act, declaring to be part of the public domain and open to settlement all lands heretofore granted to any state or corporation to aid in the construction of a railroad, which are coterminous with the part of the railroad not now completed and in operation. — Among the important **measures not yet acted upon finally** are these: a general Bankruptcy Bill, passed by the House of Representatives; a bill to relieve the Supreme Court, by creating a court of appeals in each judicial circuit to intercept much business coming up from the district courts; a bill, modelled on the Oleomargarine Act, to prevent the sale as lard of products not "made exclusively from the fresh fat of slaughtered swine," and to regulate

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the manufacture and sale of such products; a bill to fix six years as a limit to the time in which action may be brought against accounting officers and the sureties on their official bonds; and the **Federal Elections Bill**. Next to the Tariff, this last measure has excited the most attention through the country. It provides an elaborate machinery for the control of federal elections by supervisors appointed by the federal courts, and may be applied to any district on the demand of 100 voters therein. The purpose of its supporters was avowedly to prevent the alleged suppression of the negro vote in the South. By the Democrats and by a few of the Republicans, chiefly Southern members, it was opposed as an unwarrantable extension of the federal power, and especially as likely to cause race conflicts in the South. Having been adopted as a party measure by the Republican caucus, it was passed in the House, July 2, by a vote of 155 to 149, four Republicans deserting their party. On the 7th of August the bill was reported in the Senate, with very considerable modifications of its extreme features. The prospect of resolute opposition by the Democrats, which, owing to the absence of rules limiting debate in the Senate, was likely to be successful, led to several propositions introducing some form of closure in that body. This idea encountered much opposition even among the majority, and it was finally agreed by the Republican caucus, on the motion of Senator Quay, that the Elections Bill should be laid over till the next session. — **The International Copyright Bill**, which was supposed to have good chances of success, was defeated on a test vote in the House, May 2.

THE TARIFF. — An uncertainty in **the classification of worsted goods**, reaching back over a number of years, was decided by a federal court about May 1 contrary to the ruling of the secretary of the Treasury, which classed worsteds as woolens. The result was the prompt passage of a bill, May 8, to rectify the matter and sustain the position of the administration. The other view was said to have been very injurious to the woolen manufacturers. A protest against the constitutionality of this act, based on the fact that it was passed in the House by a counted quorum, was overruled, October 11, by the board of general appraisers, in an elaborate opinion. The case was appealed to the courts. — **The Customs Administrative Bill**, which at the close of the last RECORD was in the Senate committee, passed with amendments as reported and went to conference early in May. On the 27th the conference committee reported to the houses the bill which finally became law, going into effect August 1. In general the law as passed followed the Senate's amendments mitigating the stringency of the regulations against fraudulent invoices. — The bill for the **revision of the Tariff** was the most conspicuous feature of Congress's work during the summer. Substantially as reported from the Committee on Ways and Means, it passed the House, after two weeks' debate, May 21. The vote was a strictly party one, except that two Republicans voted in the negative. June 19 the bill was reported from the Senate Committee on Finance with a very large number of amendments, mainly in the way of a lessening of rates. After debating the project during nearly the whole of August and a week in September, the Senate passed it by a strict party vote, September 10. The differences between the houses then went to a conference committee. The

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bill as reported by this committee, September 26, was adopted by the House and Senate on the 27th and 30th respectively and approved by the President October 1. On the final vote three Republicans in each house declined to follow their party. The law went into effect October 6. **Prominent features** of the new schedules are as follows: Steel rails reduced one-tenth of a cent per lb.; tin plates increased from one cent to two and two-tenths cents per lb., with the proviso that they shall be put on the free list at the end of six years if by that time the domestic product shall not have reached an aggregate equal to one-third of the importations; unmanufactured copper substantially reduced; bar, block and pig tin, hitherto on the free list, receives a duty of four cents per lb. to take effect July 1, 1893, provided that it be restored to the free list if by July 1, 1895, the mines of the United States shall not have produced in one year 5000 tons; a bounty of one and three-fourths and two cents per lb. upon beet, sorghum, cane or maple sugar produced in the United States between 1891 and 1905; all imports of sugar free up to number 16, Dutch standard, in color and all above that one-half cent per lb. (formerly from three to three and a half cents), with one-tenth cent additional if imported from a country that pays an export bounty; a heavy increase on cigar wrappers and cigars; a general and heavy increase on agricultural products, *e.g.* on beans, eggs, hay, hops, vegetables and straw; a heavy increase on woolen goods, with a new classification of raw wool designed to give more protection; paintings and statuary reduced from 30 to 15 per cent. The following (among other) additions are made to the free list: beeswax, books and pamphlets printed exclusively in languages other than English, blue clay, coal tar, currants and dates, jute butts and various textile and fibrous grasses, needles, nickel ore, flower and grass seeds and crude sulphur. The internal revenue provisions were left practically as fixed by the House and mentioned in the last RECORD. Among the 464 points of difference between the two houses which the conference committee had to adjust, some of the more important were as follows: paintings and statuary, made free by the House and kept at the old rate by the Senate, were fixed at half the old rate; binding twine, made free by the Senate in favor of Western grain-raisers but taxed by the House to protect Eastern manufacturers, fixed at half the House rate; the limit of free sugar fixed at number 16, as voted by the House, instead of number 13, as passed by the Senate, thus including in the free list the lower grades of refined as well as all raw sugar. The question of **reciprocity with American nations** was injected into the tariff discussion by Secretary Blaine in June. In transmitting to Congress the recommendation of the International American Conference for improved commercial relations, the secretary dilated upon the importance of securing the markets of Central and South America for our products, and suggested as a more speedy way than treaties of reciprocity an amendment to the pending tariff bill authorizing the President to open our ports to the free entry of the products of any American nation which should in turn admit free of taxation our leading agricultural and manufactured products. In July Mr. Blaine took up the idea again in a public correspondence with Senator Frye, criticizing severely the removal of the tariff on sugar, as that on coffee had been removed before, without exacting trade concessions in return. He complained

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that there was not a section or a line in the bill as it came from the House that would open the market for another bushel of wheat or another barrel of pork. The Senate Finance Committee acted upon the suggestion of the secretary by introducing an amendment to the bill authorizing and directing the President to suspend by proclamation the free introduction of sugar, molasses, coffee, tea and hides from any country which should impose on products of the United States exactions which in view of the free introduction of sugar *etc.* he should deem reciprocally unequal and unreasonable. The rates at which the President is to demand duties upon the commodities named are duly fixed. This reciprocity provision passed the Senate and the conference committee and became part of the law. Senators Evarts and Edmunds opposed the amendment on the ground that Congress could not constitutionally delegate its taxing power to the President. A proposition submitted by Senator Sherman looking to reciprocity with Canada never reached a vote. — **A defect in the act** was discovered about two weeks after it went into effect. A part of section 30, relating to drawbacks on tobacco, which is shown by the records to have been restored to the bill by the conference committee, does not appear in the act as approved by the President. On the basis of this omission, together with the claim of unconstitutionality in the sugar bounties and in the powers given to the President by the reciprocity clause, importers are preparing to contest in the courts the enforcement of the new duties. — **Foreign opinion of the new tariff bills** has been uniformly characterized by bitter indignation. Both the English and the continental press have been filled with expressions of helpless wrath. When only the administrative bill had been passed, Germany and Austria were sounded by the French government as to the feasibility of concerted action of a retaliatory character against the United States, and numerous communications on the subject among the powers have been reported since the revised schedules went into effect. No basis for common action, however, has been discovered. A very lively agitation prevailed all through October in the Lyons silk region, the manufacturers seeking means to escape the consequences of the restriction of their market. In Austria the pearl-button makers around Vienna, whose industry is virtually annihilated, have been the subjects of charitable relief, both private and governmental. There is a great willingness in official circles to gratify the widespread popular demand for retaliation against the United States, but a total lack of practicable suggestions.

THE CURRENCY. — The various propositions in reference to the coinage of silver described in the last RECORD occupied much attention in Congress during May. Committees and caucuses worked upon the House bill, and the Senate debated its bill at length. The House was the first to take definite action, adopting on June 7 the bill agreed upon by the Republican caucus. The chief provisions were that $4,500,000 worth of silver per month should be purchased and treasury notes issued in payment therefor; that these notes should be redeemable in coin, or, at the discretion of the secretary of the Treasury, in bullion at the market price on the day of redemption; that whenever the price of silver should reach $1 for 371¼ grains, the monthly purchase should cease and the coinage of silver should be perfectly free. This bill was considered as very conservative and was distasteful to

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the "silver men." The Senate Finance Committee amended it greatly in the direction of the long debated Senate bill, but the Senate itself rejected its committee's work altogether and caused a great sensation by passing, June 17, a radical free-coinage bill, making silver coins and certificates based upon them, as well as upon gold, legal tender for all debts. Efforts of the free-coinage members in the House to force through quickly an agreement with the Senate's amendments were frustrated by bold but much-disputed rulings of Speaker Reed, and in the end the matter went to a conference committee. This committee reported a compromise, which passed both houses and became law July 14. It provides for the monthly purchase of 4,500,000 ounces of silver, "or so much thereof as may be offered"; for the issue of notes based thereon which shall be legal tender for debts "except where otherwise expressly stipulated in the contract," and which shall be redeemable by the secretary of the Treasury "in gold or silver coin, at his discretion, it being the established policy of the United States to maintain the two metals on a parity with each other upon the present legal ratio, or such ratio as may be provided by law." Two million ounces per month are to be coined into standard dollars until July 1, 1891, and after that as much as is necessary for the redemption of the notes. This measure concedes to the "silver men" the elimination of the bullion-redemption clause which had appeared in the House bill, and also gives free coinage for practically the whole product of American mines. It prevents, on the other hand, unlimited coinage, and by its statement of policy seems to afford the secretary of the Treasury a substantial ground for the maintenance of the gold standard. — The amount of silver bullion purchased under the new law from August 13, when it went into effect, to October 31 was 12,276,578 ounces, at an average cost of $1.14 per ounce.

THE FEDERAL JUDICIARY. — Since the close of the last RECORD, the Supreme Court has rendered the following important decisions: The State of Minnesota *vs.* Barber. Held, that the state law prohibiting the sale of beef that has not been inspected by the state officers within twenty-four hours before slaughtering is unconstitutional, as interfering with interstate commerce. McCall *vs.* California. Held, that the state law imposing a license tax on railroad agencies soliciting trade for railways outside of the state is unconstitutional, as interfering with interstate commerce. In a batch of Virginia Coupon Cases, various acts of the state legislature designed to avoid the acceptance of bond coupons in payment of debts to the state were declared unconstitutional, as violations of the original contract with the bond purchasers. — The federal circuit court in New York passed upon an important copyright question, June 26. The case was a suit against the publishers of a reproduction of a British encyclopædia which contained articles copyrighted in the United States. It was held that the American copyright was not lost by the publication of the articles as part of a foreign work. This is directly the reverse of a federal decision in Philadelphia some years ago — in a case involving the same publication.

THE MORMONS. — The process of crushing out the polygamous element in Mormonism reached its climax in a decision of the Supreme Court of the United States, May 19, sustaining the constitutionality of the act dissolv-

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ing the Mormon church corporation. By this act the charter of the corporation was annulled, a receiver was appointed to wind up its affairs, and its real estate in excess of $50,000 was escheated to the United States. The court upheld the law in all its provisions and the severity of the blow to the Mormons was revealed in their complete submission in the autumn. — The official termination of polygamy as an institution of the Church of Latter Day Saints was effected at the general conference of the church in Salt Lake City, October 6. The assembly unanimously ratified a manifesto previously issued by President Woodruff, in which he said: "Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I do hereby declare my intention to submit to those laws and to use all my influence with the members of the church over which I preside to have them do likewise." It has been observed that this proclamation bases the renunciation of polygamy on the ground of definitely ascertained illegality, and not upon any conviction of immorality in the practice. — The renunciation of the institution is believed by the federal officials to be sincere, and the court has accordingly rescinded the rule excluding Mormon aliens from naturalization. The governor of Arizona reports a constant influx of Mormons into that territory and suggests the enactment of the restrictions which have been put upon them in Idaho and Wyoming.

2. Affairs in the States.

ELECTIONS AND CONSTITUTIONAL CHANGES. — Two more **new states** entered the Union in July, Wyoming and Idaho, on the 3d and the 10th respectively. — **Elections for state officers** have been held in Alabama, Arkansas, Georgia, Idaho, Maine, Oregon, Vermont and Wyoming. The only results that excited especial attention were a falling off of the usual Republican majority in Vermont and an unexpectedly large majority for the same party in Maine. Speaker Reed, in the latter state, carried his district for Congress by an especially flattering vote. The new states, Wyoming and Idaho, were both carried by the Republicans. — **Amendments to state constitutions** were voted upon in New Jersey and Georgia. The former state, on September 30, overwhelmingly defeated a proposition to cancel the prohibition of special legislation in reference to the internal affairs of cities and towns; the latter ratified two propositions, one to extend the benefits of the state pension to the widows of confederate soldiers, and the other allowing bills when introduced in the legislature to be read and referred by title. — In New York a commission has devoted some time to formulating an important amendment to the article of the constitution in reference to the organization of the judiciary. — In Mississippi, on August 12, a convention of delegates met at the capital to frame a new constitution for the state. It was understood on all sides that the main object of the assembly was to devise some means of putting a check in the text of the constitution upon the possibility of negro supremacy. Among the 115 members of the convention there were less than half a dozen Republicans and only one negro. The act of Congress by which Mississippi was restored to statehood after the war enacted

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as a condition of restoration that the constitution should never be so changed as to disfranchise any citizen or class of citizens entitled by its provisions to vote. This condition the convention declared to be unconstitutional, as inconsistent with the equality of the states. A large number of projects were then discussed looking to a modification of the suffrage. Among them were projects of educational and property qualifications, and for giving the suffrage to women. The plan ultimately adopted limited the suffrage to males; but to be a qualified elector the citizen must produce evidence of having paid his taxes for the past two years and must, in addition, "be able to read any section in the constitution of this state, or . . . be able to understand the same when read to him, or give a reasonable interpretation thereof." A poll tax of two dollars is imposed by the constitution, which may be increased for county purposes to three dollars. The completed constitution was adopted by the convention and put into effect November 1, without submission to the people. — In Kentucky a convention assembled at the capital, September 8, and began the work of revising the constitution which has stood substantially without change since 1852. The difficulties put by its own provisions in the way of amending the old instrument have prevented the modification of even such obsolete clauses as those regulating slavery and requiring that votes at state elections shall be *viva voce*. As might be expected, an avalanche of propositions was precipitated upon the convention as soon as it met, and up to the close of this RECORD small progress has been made toward definite determination of lines on which the chaos is to be reduced to order.

THE TRUSTS. — The current of reaction against the combination of corporations has continued unchanged in force. In New York state, the illegality of the Sugar Trust was finally determined by a judgment of the court of appeals, June 24. This affirmed the decision of a lower court, declaring forfeited the charter of a corporation which had become a member of the trust. It was decided to be a violation of law for a corporation to enter a partnership, and an elaborate analysis of the deed of trust convinced the court that this was the essential character of the relationship between the corporation and the trust's board of control. In consequence of this decision the parties interested in the trust set in motion a scheme of reorganization as a corporation under the laws of New Jersey. This scheme, however, was checked by a fresh suit which resulted in a decision, November 1, throwing the concern into the hands of a receiver. In Illinois, the Chicago Gas Trust has been pursued through a variety of legal by-ways since the first adverse decision mentioned in the last RECORD. It was put in the hands of a receiver May 28, and enjoined from transferring any of its property to a Philadelphia corporation which it had called to its aid. In September the city brought suit to forfeit the charter of the trust and of each of the companies connected with it. A decision on a subordinate incident of the litigation held that the law of the state did not authorize the aggregation of capital in corporate form for the mere purpose of investing in the stock of other corporations. The end is not yet. — The mass of legislation against trusts was increased by the enactment, July 2, of a **federal Anti-Trust Law.** Its application is limited of course to interstate and foreign commerce and to the

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trade of the territories. By its provisions, "every contract in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce" is declared to be illegal, and every person becomes guilty of a misdemeanor "who shall monopolize or attempt to monopolize or combine or conspire with any other person or persons to monopolize" any part of said trade or commerce. "Person" is expressly declared to include corporation. A suit has been brought under this act against a combination of coal-dealers in Tennessee.

FARMERS' INTERESTS.—The conspicuous feature of the last six months has been the enormous development in numbers and in influence of **the Farmers' Alliance**. With a national organization centered at Washington, it has state branches throughout the South and West and is rapidly extending its membership in the Middle and Eastern states. As officially stated, its purposes include the following: To labor for the education of the agricultural classes in the science of economic government in a strictly non-partisan spirit; to develop a better state, mentally, morally, socially and financially; to create a better understanding for sustaining civil officers in maintaining law and order; to suppress personal, local, sectional and national prejudices, all unhealthy rivalry and selfish ambition; to assuage the sufferings of a brother or sister, bury the dead, care for the widows and educate the orphans; and to protect the principles of the Alliance unto death. In politics it maintains a strictly non-partisan attitude, while expecting its members to work in their respective parties to secure just recognition of the rights of the farmer. "All questions in political economy will be thoroughly discussed, and when the order can agree on a reform as necessary, they will demand it of the government and of every political party, and if the demand goes unheeded they will devise ways to enforce it." Among the reforms which have been agreed upon as necessary are these: The abolition of national banks and the substitution of legal-tender treasury notes for the national-bank notes; legislation to prevent dealing in futures; the free coinage of silver; the prohibition of alien ownership of land; state ownership of the means of communication and transportation; and — what has attracted more notice than all else — **the sub-treasury scheme**. This last-named project has been formulated in a bill and introduced into both houses of Congress. It is substantially this: On demand of 100 citizens of any county producing yearly $500,000 worth of cotton, wheat, oats, corn and tobacco, a sub-treasury shall be established, including warehouses, elevators and other facilities for handling these commodities. The manager of the sub-treasury, elected every two years by the people of the county, shall receive on deposit such of these commodities as may be offered, giving a negotiable warehouse receipt therefor and advancing to the depositor treasury notes equal to 80 per cent of the market value of the deposit. The produce may be redeemed by the presentation of the warehouse receipt and the payment of the amount originally advanced on it, together with interest at one per cent for the time elapsed and stated sums for insurance, warehouse expenses *etc.* This project is especially popular in the Southern branches of the Alliance and has been used as a test in determining the endorsement of candidates for office. The ideas which are especially potent among the farmers of the Northwest were noted in the last RECORD. It is in the South

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that the most startling results have been produced by the farmers in practical politics. In Tennessee and in Alabama they have dictated the Democratic nomination for governor. In Arkansas, the Alliance candidate was endorsed by the Republicans. In all the Southern states aspirants for Congressional honors have been obliged to pass the farmers' test. The Democratic party organization in South Carolina was taken possession of bodily by the farmers, under a leader named Tillman, who, after a desperate struggle with the old leaders, became its candidate for governor. In Kansas, the Republican organization is threatened with a similar fate.

LABOR INTERESTS. — The concerted demand for **the eight-hour day** which was inaugurated May 1 has met with very general success in the building trades, where it was especially pressed. Strikes have been frequent throughout the country in all occupations, though not generally of great importance. That which attracted the most attention was the strike of the switchmen and yardmen of the New York Central Railroad, August 9. The men were ordered out without warning by the authorities of the Knights of Labor, and the issue with the company was made on the allegation that men had been discharged for the sole reason that they were Knights, and that a deliberate purpose was manifested to destroy the order. Master Workman Powderly and the central executive of the Knights sought in vain to bring the railroad officials to submit the difficulty to arbitration, and an attempt to bring about a general strike of railway employees throughout the country having failed, the company gained a complete victory. It was denied by the company that men had been discharged solely because of their connection with the Knights of Labor, but no explanation was given that could be construed as a recognition of the right of the Knights to review the company's action. The men who struck were refused re-employment and their places were after some confusion filled by others. Several lawless acts by the strikers having lost them all public sympathy, the company on October 1 issued an order announcing that "it objects" to its employees being members of the Knights of Labor, on the ground that "such membership is inconsistent with faithful and efficient service to the company." Mr. Powderly considered this action as proving the company's long-cherished design of breaking up the order. — **The hostility between the Knights and the Federation of Labor** assumed an acute form in a bitter controversy in June between Powderly and Gompers, the respective heads of the two orders. Each charged the other with a variety of offenses against the true interests of the workingmen.

THE LIQUOR QUESTION. — Interest under this head has been centered chiefly in the **effects of the original-package decision.** As was predicted when the Supreme Court announced its opinion, state prohibitory and local option laws have been everywhere nullified by the sale of liquor in packages brought from other states, and of sizes to suit all sorts of demand. In some states even the license laws have been set at defiance, *e.g.* in Pennsylvania, where the courts have held that under the recent decision no state license was necessary to the seller of imported liquor. The state authorities in Kansas undertook to oppose the "original-package" movement by a series of prosecutions against the sellers on various minor provisions of the state law, and this was met by an injunction from the federal court, restraining the

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county officers from prosecuting the alleged offenders. Public sentiment was strongly aroused against the destruction of the prohibitory system. The situation arising from the decision attracted the attention of Congress and bills were early introduced to act upon the intimation given by the court that some national legislation was necessary in the case. The Senate first passed a bill simply providing that liquor brought into a state from without should be subject to the laws of the state "enacted in the exercise of its police powers," just as if the liquor were produced in the state. The House passed a substitute measure of a wider character, enacting that any article of commerce brought into a state should be subject to the state laws, provided that the state should not discriminate in favor of its own citizens or of its own products in its regulation of the sale of the article. Ultimately, however, on August 8, the Senate bill became the law. Cases decided in Kansas and Iowa after the passage of this act held that it was not retro-active and that the state laws passed prior to the federal act were not revived. Accordingly original-package saloons may continue their existence until the states shall enact new laws under the permission of the federal act.

NECROLOGY. — May 3, James B. Beck, United States senator from Kentucky; June 23, George W. McCrary, secretary of War under President Hayes; July 13, Gen. John C. Frémont; July 18, Eugene Schuyler, consul-general at Cairo, and well known in diplomatic and literary circles; September 8, Isaac P. Christiancy, formerly United States senator from Michigan; October 13, Associate Justice Miller of the United States Supreme Court and W. W. Belknap, secretary of War under President Grant.

II. FOREIGN NATIONS.

INTERNATIONAL RELATIONS. — The most prominent incidents in the world of diplomacy have been the negotiations and treaties relating to **the partition of Africa.** England and Germany were the first to reach a definite settlement. The dangerous tension threatened by the conflict of interests on the eastern coast led to negotiations, which lasted through May and June and resulted in a treaty signed July 1. This instrument fixed definite boundaries between the spheres of influence of the two powers both in the eastern and in other parts of Africa, assigned to England the sole protectorate over Zanzibar and, in return for considerable concessions by Germany, transferred to the latter power the island of Heligoland in the North Sea, off the German coast. The announcement of the contents of this treaty immediately excited complaints from France that the establishment of a protectorate over Zanzibar violated a convention of 1862 in which Great Britain guaranteed to France the Sultan's independence, and to which Germany became a party in 1886. Lord Salisbury apologized for overlooking this convention and opened up with France the whole African question. The result was an agreement signed August 5, in which France recognized the Zanzibar protectorate, Great Britain in return recognized the protectorate of France over Madagascar, and lines of delimitation were fixed between the spheres of influence of the two governments in northwestern Africa. An offer of Lord

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Salisbury to include the Newfoundland question in the settlement was peremptorily declined by M. Ribot. The relations with Portugal next occupied Great Britain's attention and an agreement was reached August 20 establishing in elaborate detail the boundaries of the two powers' spheres of influence in the region of the Zambesi. The fact that Portugal resigned certain territory which had long been recognized as belonging to her aroused anew the fierce popular hatred of England and the ministry was overthrown. Up to this time the new ministry has not ventured to ratify the treaty, though Lord Salisbury voluntarily modified some of the most unpalatable provisions. In the middle of October two British gunboats entered the Zambesi river against the protests of the Portuguese at its mouth. This action was an anticipation of the treaty and contributed much to the ill-feeling in Portugal against the settlement. After these treaties the only region left where conflict was possible was along the Red Sea. Negotiations with Italy to fix a boundary between her Abyssinian sphere and that of England in Egypt were opened at Naples in September, but very quickly came to a deadlock on the question as to the possession of Kassala, an important trading centre on the route from Massowah to Khartoum. The deadlock seems likely to be permanent. — **The Triple Alliance** still endures. This is perhaps all that can be accepted as certain out of a host of rumors as to the relations of the contracting powers. A persistent report, appearing at the time of the Emperor William's meetings with the Austrian monarch in September, affirmed that the treaty of alliance, though not expiring by limitation till 1892, had been renewed till 1897. This lacks official confirmation. During the summer tour of the German Emperor in the northern countries, there were indications of a disposition on his part to concede something to Russia in Bulgaria; it is believed that the displacement of Prince Ferdinand in favor of Prince Oscar of Sweden or Prince Waldemar of Denmark was broached, but without result. The interview between the German and the Russian Emperor seemed on the whole to leave Russia's attitude toward the alliance more hostile than before. In September, Signor Crispi, in an interview with a French editor, assumed a tone of regret at Italy's relations with France, but any important inferences were vitiated by exuberant laudation of the Triple Alliance in a public address in October. — **In the Balkans** the feature of the period has been the bold and successful policy of the Bulgarian premier in his relations with Turkey. M. Stambouloff kept a strong and even threatening pressure upon the Porte for the sanction of Prince Ferdinand's election and for the recognition of religious and other rights to the Bulgarians in Macedonia. As Russia was at the same time demanding in a somewhat ominous manner the payment of Turkey's long-standing war debt, the Sultan hesitated; but in the middle of July, when most of the great powers had endorsed part of Stambouloff's demand, he yielded so far as to sanction the appointment of three Bulgarian bishops to the charge of Macedonian dioceses in which the Bulgarians were in a majority, with general control of educational matters. This concession was considered to involve a great moral victory for the cause of Bulgarian nationality. The Greeks and Servians protested vigorously and Russia expostulated with the Sultan, but without effect. Only when the concession was resolved upon, the formalities in promulgating it were at Russia's desire so arranged as not

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to involve necessarily a constructive recognition of Prince Ferdinand. M. Stambouloff did not press the matter of the recognition of the prince, resting content with the ground gained. It was regarded as significant that Germany endorsed the Bulgarian demands while Russia opposed them. Bismarck's policy had been never to come officially in conflict with Russia in this quarter. — **The Anti-Slavery Conference** ended its work June 23. The "general act" in which its projects for the destruction of the slave trade are embodied was signed by all the powers except Holland. This government objected to import duties authorized in the Congo State, as contravening the Treaty of Berlin. The provisions of the convention adopted relate in great detail to ways and means for crushing out the traffic in slaves and include, as incidental to the preservation of the native races, heavy restrictions on the trade in firearms and in alcoholic liquors.

THE LABOR QUESTION. — Strikes and the allied forms of agitation have been common throughout the period under review in all civilized lands. The impulse given to the eight-hour movement by the strikes on May 1 has not yet lost its force. As especially noteworthy events of the period may be mentioned: A great demonstration by English trades unions in Hyde Park, London, May 4, in which 150,000 men were in parade and half a million listened to addresses, but without disorder; an international miner's congress at Jolimont, Belgium, May 22–25, attended by delegates from England, France, Germany, Austria and Belgium, at which an eight-hour day was demanded, to be secured by legislation, and a general European strike threatened in case it was not obtained within a year; great disorders throughout May in France, Austria and Spain, especially in the mining regions; and a prolonged and widespread contest in Australia, starting with the sheep-shearers and spreading through sympathy to the shipping, mining and many other industries in all the Australian colonies and even in New Zealand. The trades unions in these regions are especially well organized, with a central governing body constituted on the principle of federation. In this contest, which lasted all through August and September, the chief question was that of the employment of non-union men. As the strikes and boycotts were prolonged, the employers gradually perfected organizations as extensive as those of the workingmen, and by this means succeeded during September in making some headway toward restoring business. The loss by the strikes, especially to commerce, has been enormous.

GREAT BRITAIN AND IRELAND. — **The session of Parliament** continued till August 18, but was quite barren of important legislation. The chief measures announced by the government — the Irish Land Purchase and the Tithe Bill — became overshadowed in May by a controversy over a proposition in the budget for devoting a certain sum, made available by the surplus, to the extinction of liquor-sellers' licenses by purchase. A strong opposition to this project, originating with the extreme temperance people but speedily adopted by the Gladstonians in Parliament, showed itself particularly in the consideration of the Local Taxation Bill. It was maintained that to compensate a publican for a refusal to renew a license was to recognize in him a right to the license. Mr. Gladstone called the measure a "publicans' endowment bill." Public sentiment showed a strong hostility to the project,

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and in the face of diminishing majorities on every vote touching the subject and a debate which threatened to exclude all other business from the session, the government, on June 23, announced the withdrawal of the disputed licensing clauses of the bill. Meanwhile the slow progress of business had given rise to a consideration by the government of some change in the rules of procedure. Mr. Smith laid before the house, June 17, a proposal for a new standing order, providing that bills which had got through the preliminary stages as far as committee of the whole might be taken up at the next session at the point they had reached, and announced his intention to deal with the Irish Land Purchase Bill under this rule, if adopted. The opposition made it clear that there would be as much difficulty in passing the rule as in passing the bills without it, so it was not pushed, and the ministry finally concluded to abandon all its principal measures, finish up as soon as possible the routine and non-contentious legislation, and begin the next session in November instead of in February, as is the custom. The bill ratifying the cession of Heligoland to Germany and the regular supply bills were passed, with some other measures of minor consequence, and Parliament was prorogued. — The difficulties of the ministry in Parliament were accompanied, just at their height, by rather unusual **difficulties in administration**. In July a strike in the London police force created considerable disturbance for several days. The military had to be called out to maintain order. At about the same time a mutinous spirit developed in the Grenadier Guards, the flower of the British army; and one battalion, for refusing to parade when ordered, was punished by being transferred to a foreign station. The London letter-carriers also manifested the prevailing spirit and caused some trouble by threats of a strike, which were not, however, generally carried into effect. — The generally **peaceful condition of Ireland** continued through the summer. Messrs. Dillon and O'Brien busied themselves at intervals in seeking to hold meetings, especially in Tipperary, but were in most cases prevented by the police. In the latter part of August the official report on the **condition of the potato crop** announced that the blight had appeared and that in some districts the crop was a total failure. At the same time the Nationalist leaders began to call for provision against impending famine and to use the crop failure as an argument against the payment of rents. There followed a general revival of the agitation against the landlords, which had flagged greatly. No action was taken by the government till September 18, when suddenly and unexpectedly Messrs. Dillon and O'Brien, with a number of less conspicuous leaders of the National League, were arrested. The charge against the prisoners was conspiracy to prevent the payment of rents to Mr. Smith-Barry, the now famous Tipperary landlord. The trials began at Tipperary, September 25, before the resident magistrates. On the day of the opening a *mêlée* occurred at the door of the court-house, in which a number of people were clubbed by the police. Mr. John Morley, who was present, has since denounced the action of the police as wholly unnecessary and as brutal in the extreme. The defendants on trial at first made a fruitless effort to change the magistrate presiding, on the ground of bias. Proceedings then degenerated into a prolonged wrangle between prisoners, counsel and the court. On October 10, while the trial was still in progress, Messrs. Dillon and O'Brien

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disappeared and after a few days arrived in France, whence they sailed later for America. The events at Tipperary gave a great stimulus to the activity of the National League, and on October 6 a conference of the Irish Parliamentary Party met at Dublin on the call of Mr. Parnell. Resolutions were adopted promising support to suffering tenants, calling upon the government to take measures for the relief of the distressed districts, denouncing the arrests of the Nationalist leaders and appealing to the friends of Ireland, especially in America, for subscriptions to assist the people in their distress. A committee was appointed to visit America and lay the Irish situation before the people. It was as members of this committee that Messrs. Dillon and O'Brien forfeited their bail and left the country as stated above. — The Irish Secretary, Mr. Balfour, spent the last week of October in travelling through the distressed districts in the west of Ireland and pushing the construction of railroads and other public works designed to give employment to the people. — **Died**: June 28, Lord Carnarvon, the Conservative statesman; October 12, James E. Thorold Rogers, the economist.

THE BRITISH COLONIES. — **The Canadian Parliament** was prorogued May 16. Its work included a readjustment of the tariff, a new banking act, numerous amendments to the criminal law and the creation of a bureau of labor statistics. The Dominion government proclaimed by an order in council, October 14, the abolition of the export duty on logs destined to the United States. This brought into operation the lower rates on lumber in the McKinley bill, which were made applicable only to the products of countries that imposed no export duty. **The Ontario elections** in June resulted in a Liberal victory, the chief issue being the maintenance of separate schools for Catholics, to which the Conservatives were opposed. In **Manitoba** the abolition of the separate schools was enacted by the legislature at the last session, and in September a numerously signed memorial was presented to the governor-general by the Catholics of the province, praying that he disallow both this act and the act abolishing French as an official language. On October 28 the government announced that it would not interfere, but would leave the question of constitutionality to the courts. — **The discontent in Newfoundland** at the British government's action in the fisheries matter continued to be acute through the season. A very vigorously, if not impertinently, worded protest against the *modus vivendi* was addressed to the Queen by the colonial legislature in May. In the latter part of that month indignation blazed especially high at the action of a French naval officer in destroying the nets of some British subjects found fishing on the French shore. Later in the season a lobster-canning establishment was set up on that shore by a Newfoundlander, and the owner defied the British commander's orders to close it. Upon the occupation of the place by marines, the owner brought suit against the commander for damages, and was sustained in this course by public sentiment in the island.

GERMANY. — **The Emperor** has continued to impress his vigorous personality upon the affairs both of Germany and of Europe in general. He is understood to have taken an active personal part in the negotiations with England about Africa. In the latter part of June he started on a tour which included the Danish and Norwegian capitals. Returning for a short time to Ger-

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many, he continued his travels in August, visiting King Leopold of Belgium at Ostend and Queen Victoria at Osborne, and then proceeding to St. Petersburg for a conference with the Czar and for attendance upon the Russian military manœuvres. His stay in Russia was characterized by protracted interviews with the Czar and M. Giers, in which Chancellor Caprivi took part. In September the Emperor entertained Francis Joseph of Austria at Rohnstock during the German manœuvres, and Caprivi and Kalnoky were in conference on this occasion. The two Emperors then in early October spent some time together in Austria. — **The new Reichstag** opened its session May 6. The Emperor's address devoted especial attention to the need of further legislation for the protection of the workingmen. Several bills were promised on the general lines recommended by the labor conference in March. The speech expressed confidence in the maintenance of peace by the Triple Alliance, but declared the necessity of a further strengthening of the army, especially the artillery, and announced a bill for that purpose. Chancellor Caprivi made his first address to the Reichstag in his official capacity May 12. The subject was Germany's colonial policy, and the Chancellor made an excellent impression on all parties. The army bill was taken up May 14. It provided for adding 18,000 men and 70 batteries to the peace effective, entailing a permanent addition of 18,000,000 marks to the budget. The government intimated distinctly in debate that this was but the beginning of a wide-reaching reorganization of the army, involving an expense that could not yet be estimated. This announcement gave a little life to the opposition that had hitherto languished; but after a vain attempt to get the concession of a two-year term of service and a firm legislative control of the army, Herr Windthorst led the bulk of the Centrists over to the government's support and the bill passed without amendment. Without having undertaken any other business of importance, the Reichstag was prorogued, July 2. — **The Anti-Socialist Law**, after having been in force 12 years, expired by limitation September 30. The socialists throughout the empire celebrated the relaxation of their bonds with much enthusiasm but without disorder. The unwonted privilege of unrestricted discussion of their views both by voice and by pen was utilized to the utmost. Their old "programme," adopted at Gotha in 1875, the publication of which was prohibited by the now obsolete law, has been revived by their press. In the middle of October a congress of the Socialists met at Halle and in a session of several days perfected plans of organization and propaganda. In the play of internal factions in the party the older and more conservative leaders triumphed over the more radical and revolutionary element. — Much attention throughout the world was attracted during the early summer to a series of **interviews with Bismarck** which appeared in various journals of Germany, France, England and Russia. The general tone of the Prince's remarks was that of petulance and extreme irritation at his position. Some of the reports contained statements and comments touching recent international relations which were of a character to excite alarm in diplomatic circles. It was rumored that the Emperor was obliged to explain formally to Austria and other powers that Bismarck's utterances had no more significance than those of any other private citizen. The Prince's view of the Anglo-German treaty was unfavorable, and other

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features of his successor's policy were forcibly assailed in his remarks as reported, though in several instances he denied the accuracy of the reports. No important interviews have appeared since the end of July, but it is understood that a Hamburg paper (the *Nachrichten*) has assumed the function of expressing Bismarck's opinions.

FRANCE. — The current of politics has been wholly unruffled by sensational events. **The Chambers** passed the early summer in routine business. A grand committee appointed in the spring, under the presidency of M. Meline, busied itself all through the summer with the elaboration of a tariff system to take the place of the treaties soon to expire. The composition of the committee is strongly protectionist. That the legislature tends toward the same sentiment was shown by the passage in July of a bill imposing a duty of three francs on corn, with the avowed purpose of aiding French agriculture. Upon the reassembling of the Chambers, October 20, after the summer vacation, the government submitted a tariff bill. It provides for a maximum tariff on agricultural products, which, as coming from countries not disposed to favor France, shall not be subject to treaty, and on about a thousand other articles both a minimum and a maximum duty, according as they shall or shall not be subject to treaty arrangements. The raw materials of the most important industries, like wool, cotton, flax and hides, are free. — President Carnot has travelled extensively through the country and has been greeted everywhere with manifestations of popular esteem. He took occasion of his presence near the prison of Clairvaux to issue the expected **pardon of the Duke of Orleans**, June 3. The young man was conducted to the Swiss frontier and liberated. — **The inner springs of the Boulangist movement** were exposed in September through a series of revelations in *Le Figaro*, by one who was familiar with all the details. It was shown that the financial support of the movement came largely from the monarchic party, with the approval of the Count of Paris. The Duchesse d'Uzès alone advanced 3,000,000 fr., with the understanding that it was to be made good at the restoration of the monarchy. The whole tenor of the revelations was to exhibit Boulanger as an exceedingly weak and contemptible character, whose worthlessness the Royalists understood, but whose popularity with the Radicals they were willing to use for their own ends. Much surprise was manifested at the revelation that the Count of Paris had countenanced the scheme, even to the extent of personal consultation with the general. The count explained his position in a published letter, saying: "Proscribed by the republic, I take up, in order to fight it, the arms with which it supplies me. I do not regret having made use of them to divide the Republicans." Boulanger's leading Radical adherents have all deserted him, and most of them have recorded their contempt for him personally, justifying it by numerous anecdotes of his cowardice and incompetence when his cause promised success.

AUSTRIA-HUNGARY. — The session of **the Delegations** in June passed without important incident. Count Kalnoky's address gave a favorable outlook for peace in foreign relations. The budget showed a small increase in the military item. — **The race conflict in Bohemia** appeared with its old violence in the Diet which met at Prague May 20. The business before the

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Diet was to carry out in details the scheme of compromise between Germans and Czechs, mentioned in the last RECORD. Violent opposition by the dissatisfied Young Czechs, who refused to be bound by the compromise, brought the enforcement of the plan practically to a standstill. The conservative part of the Czechs were overpowered by the younger members of the party and the final settlement of the matter is still undecided, pending an appeal to Count Taaffe to preserve the language of the Czechs as the official language of Bohemia. — The communal and municipal elections in Austria proper have revealed great strength in the anti-Semitic ideas which are prevalent in those regions. Many instances of extreme bigotry and intolerance have attracted attention.

ITALY. — Crispi's position at the head of the government has been firmly maintained, though it was supposed in some circles that Bismarck's retirement, as well as the condition of internal politics, rendered it very insecure. An attempt of the Senate, May 5, to interfere by amendment with the government's measure in reference to the *opere pie* was met and thwarted by a threat of dissolution and appeal to the country. Violent attacks on the policy of the government both in respect to the Triple Alliance and the internal administration were met by an overwhelming vote of confidence in the lower house, May 31. It was clear, however, that the military and naval expenses incidental to the alliance were embarrassing the government and burdening the people very greatly. — Some comment was caused by the action of the Pope, in July, in leaving the Vatican to visit an artist's studio in Rome. This unusual proceeding gave rise to rumors that the semblance of imprisonment would cease to be the papal policy; but nothing has happened since to confirm the rumors. — The date of the general elections is approaching, and Crispi delivered an address at Florence, October 8, which was in some sort a basis for the campaign. It was devoted mainly to a defence of Italy's connection with the Triple Alliance and to a vigorous attack on the Irredentists as seeking to destroy that connection.

SPAIN. — The downfall of Sagasta's ministry occurred July 5, wholly unexpected by anybody. The government had carried its suffrage bill and other measures and had triumphed against several direct attacks of the Conservatives. An adverse motion by a discontented Liberal, however, just as the Cortes were about to adjourn for the summer, led Sagasta to offer his resignation, which the Regent promptly and unexpectedly accepted. Canovas del Castillo, the Conservative leader, though supported by only a small minority in the Cortes, formed a cabinet and assumed the government immediately. All parties have since been preparing for the general elections now near at hand. The Republican party, under Salmeron, have perfected a new organization with a platform that distinguishes them from revolutionists of the Zorilla type, while at the same time not permitting of union with the Liberals led by Sagasta and Castelar. The Conservatives hold forth a programme of protection and labor legislation.

RUSSIA. — A nihilist plot against the life of the Czar was unearthed early in June. Dynamite was reported to have been found in a cellar of the palace. A group of Nihilists in Paris was ferreted out as connected with the affair, and several of its members were prosecuted and punished by the French

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government. — A law putting the now customary restrictions upon the labor of women and children was published June 21. — A series of new **repressive edicts against the Jews** was reported in the *London Times* and other European papers about the first of August, and excited much indignation throughout Western Europe and America. The new regulations were said to prohibit the Jews (1) to reside anywhere but in towns and to own or to farm land; (2) to reside in any but sixteen designated provinces in the western border of the empire; (3) to be connected in any way with the mining industry; (4) to constitute more than five per cent of the students in schools, gymnasia or universities; (5) to practise law without the special sanction of the minister of the Interior, which it is understood is not to be given; (6) to follow the profession of engineer or of army doctor or to fill any government post whatever. Some of these rules are admitted to be old, but the novelty is to consist in their rigorous enforcement.

MINOR EUROPEAN STATES. — In Portugal the bad feeling against England displayed itself in violent opposition both within and without the Cortes to the treaty concluded in reference to African possessions. The Pimental cabinet was forced to resign September 17 and great confusion prevailed for several weeks. Not till October 11 did a new cabinet assume office, headed by General Chrysostomo. The Cortes was prorogued on the 15th. — **The Porte** has been called upon to deal with a prolonged and earnest agitation among its Armenian subjects. Moussa Bey, one of their oppressors, whose acquittal created widespread scandal, was ultimately rearrested and banished to Medina in September. A report that the Armenians were arming themselves, as the impositions of the Turks and Kurds seemed to justify them in doing, caused a dispersal of a meeting in Erzeroum, June 20, by the soldiery, followed by a general attack on the Armenian population in which many lives were lost. For manifesting too little energy in demanding satisfaction from the Porte, the Armenian patriarch in Constantinople was mobbed by his countrymen, July 28. These events, with representations from some of the European powers, led to commissions of inquiry and to some propositions for reform in the administration in Armenia, but without result as yet. The concession of special privileges to the Bulgarian church in Macedonia stimulated persistent demands for reform in the relations of the government with the Greek church. It was claimed that the rights of local administration long conceded to the Christian ecclesiastical authorities had been reduced to a dead letter by the Turkish officials. In the middle of October the Ecumenical Patriarch at Constantinople put an interdict on Greek worship in Macedonia, and shortly after the Sultan came to terms and granted most of the Christians' demands. — **The elections in Servia**, September 29, resulted in a sweeping victory for the Radicals, now in power. The presence of ex-King Milan in the country and his evident popularity with the army caused some uneasiness in governmental circles, but nothing resulted. — **In Bulgaria**, the trial of Major Panitza and fourteen associates for conspiracy against Prince Ferdinand lasted from the 15th to the 30th of May. The leader and three others were convicted and the former was executed June 29. The general elections for the Sobranje in September resulted in an overwhelming victory for the government, attributable in some measure probably to M.

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Stambouloff's successful foreign policy. — A revolution broke out September 11 in the canton of Ticino, **Switzerland**. A Liberal faction forcibly overthrew the Ultramontane government, but was itself obliged to give way to a representative of the federal authorities, who intervened to restore order. A vote in the canton on the question of revising the constitution resulted in a victory for the Liberals, but only by a majority of 100 in 24,000 votes. With opinion so evenly divided, the federal authorities restored the conservative government, but with a strong federal control, and then brought about a conference of the parties to reconcile their differences. — **The Danish legislature** assembled October 6, with an increased opposition majority to criticize the ministry, who will be called upon to explain a deficit of 4,500,000 crowns. — **The King of the Netherlands**, who has been ill for years, is now reported to be insane. On the 29th of October, a vote of the Parliament declared him incapable of governing and invested the council of state with royal powers. — **The Greek ministry** of M. Tricoupis resigned, after a four years' lease of power, on the 28th of October. It was succeeded by a cabinet under the presidency of M. Delyannis.

AFRICA. — The general features of the **territorial adjustment** effected by the various treaties mentioned above are as follows: The "hinterland" doctrine of the Germans, namely, that possession of the coast gave a claim to continuous territory inland to an indefinite extent, was recognized as a basis for the work of delimitation. To Germany was assigned a region lying back of her coast near Zanzibar, and reaching to the eastern boundary of the Congo State. This tract includes half of Victoria Nyanza, the whole east shore of Lake Tanganyika and the northeastern shore of Lake Nyassa. Zanzibar itself and the whole eastern coast of the continent north of the German territory were left to Great Britain, with interior regions reaching westward to the Congo State and northward to the Soudan and Abyssinia. The conquest of the Mahdi's realm will thus make British influence continuous from the Mediterranean up the Nile and across to Victoria Nyanza. The long-cherished English project of maintaining this continuity southward to the Cape possessions was abandoned in yielding to the Germans their "hinterland" as above described; but some compensation was found in a provision for freedom of transit across this territory. By the Anglo-Portuguese agreement, as negotiated, the possessions of Portugal in the east were limited to a comparatively narrow strip with a long coast-line, reaching from the German boundary to the British possessions about the Cape. The Portuguese claim to "hinterland" that would connect with their possessions on the west coast was nullified by the recognition of a vast interior region to England. Portugal obtained the right to build railways across this tract, but on the other hand conceded the free navigation of the Zambesi, whose upper course is entirely in English hands. On the southwest coast of the continent no important changes were made; boundaries were merely determined with the greater exactness made possible by better geographical knowledge. In the northwest, the French claim to "hinterland" resulted in the delimitation of the region south of her Mediterranean possessions where it comes in contact with British interests on the Niger. The exact line of demarcation was left to be fixed by commissioners, but the agreement in general recognizes to France

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undisputed sway in the vast region bounded by the Mediterranean, the Atlantic and the upper Niger, and extending eastward to Tripoli and Lake Chad. — Important action was taken in July in Belgium with reference to the **Congo State**. By an agreement negotiated between Belgium and King Leopold, as sovereign of the Congo State, the former undertakes to advance to the latter during the next ten years $5,000,000 without interest. At the end of the period, Belgium is authorized, if she so wishes, formally to annex the Congo State. King Leopold renounces all claims to recompense for outlays incurred in the administration and provides by a testament that all his sovereign rights on the Congo shall go to Belgium at his death if they have not been assumed before. — The hostilities between the French and the King of Dahomey were terminated by a treaty of peace in October.

SOUTH AMERICA. — Interest has centred during the last six months upon the state of **affairs in Argentina**. The financial difficulties mentioned in the last RECORD grew constantly more serious and the condition of the treasury excited widespread uneasiness both at home and abroad. Excessive issues of paper money and of *cedulas* (mortgage bonds on land, guaranteed by the government) gave rise to grave charges of corruption against President Celman and his friends. Early in May the finance minister, Senor Uriburu, resigned because the President declined to take steps for the removal and punishment of the bank officials who were deemed responsible for certain illegal issues. This event increased the distrust in the government, and on July 26 the discontent culminated in a revolution in the capital, managed by an organization known as the Union Civica. For several days Buenos Ayres was the scene of hard fighting, part of the army and navy having joined the insurgents; but finally, before any decisive result had been reached, negotiations supervened and hostilities ceased. Amnesty was granted to the insurgents and on August 5 Celman resigned his office. The Vice-President, Pelligrini, immediately assumed the executive power and with a reorganized cabinet soon succeeded in restoring public confidence and order. The rejoicings at the downfall of Celman were excessive. Measures looking to an entire readjustment of the public finances have been under consideration by the cabinet and the legislature ever since. It is said that millions have been taken from the treasury by Celman and his friends. Some dissatisfaction is still felt at the presence of some of Celman's supporters in the reorganized cabinet. — **Uruguay** experienced in July a financial crisis springing from causes similar to those at work in the Argentine. Paper money and dubious administration of the national bank, connived at by the President, seem to have brought the disaster. No insurrectionary movement, however, was reported. — **The new constitution in Brazil** was promulgated by the provisional government June 23, it having been previously announced that the work of the constituent assembly should be merely that of ratification. In its main features the new instrument follows that of the United States. It provides for a President responsible to the nation only, with heads of departments responsible exclusively to him. There is a bicameral legislature, with terms of three and nine years respectively. The presidential term is six years, with ineligibility for ten years succeeding. The election of President is indirect through electors in each of the states, with devolution on the

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legislature in case no candidate obtains an absolute majority. The election for members of the constituent assembly took place September 15. There was no organized opposition to the candidates presented by the government and few other than these were returned. — **Peru** inaugurated a new President, Remigio Morales, August 10. Work on the great contract of the foreign bondholders is progressing steadily. — **The Panama Canal** has been the subject of a negotiation between Lieutenant Wyse and the Columbian government, looking to resumption of work on the enterprise. An extension of the concession for ten years was agreed to by the government, but some trouble has been found in getting the ratification of the congress at Bogota. The report of the special commission sent out by the French receiver of the defunct company estimated eight years and $18,000,000 as necessary to complete the canal. It further expressed the opinion that the completion is possible only on the basis of an international agreement among the states interested.

CENTRAL AMERICA. — A revolution in San Salvador, June 22, resulted in the death of President Menendez and the assumption of power by General Ezeta, the leader of the insurgents. Ezeta immediately announced his **opposition to the plan of union** with the other Central American republics [see last RECORD], on the ground that it was merely a scheme for the enslavement of the other states by Guatemala. The latter government thereupon declared war against Ezeta, and hostilities were carried on during July and most of August, with results not unfavorable to the Salvador forces. Honduras showed evidence of an inclination to side with Guatemala, but Nicaragua and Costa Rica undertook the task of mediation. In the middle of August, through the action of the whole diplomatic corps in the struggling countries, a basis of peace was arranged, by which Ezeta was recognized as provisional President in San Salvador. The general effect on the plan of union is very unfavorable. The first diet of the union was to meet September 15, and it was expected that by that time Costa Rica and Nicaragua would have given in their adherence to the scheme, as the other three states had done. But with Ezeta in power, San Salvador's ratification of the project was practically withdrawn, and Costa Rica and Nicaragua at length resolved in July to put off final action on their part till 1891. As the plan was only to go into operation when a majority of the five states acceded to it, it is now at a standstill.

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